**Interpretation of the Law of the People's Republic of China on Tendering and Bidding**

The Law on Tendering and Bidding is a general term for the legal norms used by the state to regulate bidding and bidding activities and adjust the various relationships arising in the process of bidding and bidding. According to the different legal effects, the legal norms for bidding and bidding are divided into three levels: the first level is the law on bidding and bidding issued by the National People's Congress and its Standing Committee; the second level is the administrative regulations on bidding and bidding issued by the State Council and the local people's congresses with legislative power; the third level is the departmental rules on bidding and bidding issued by the relevant departments of the State Council and the local people's governments with legislative power. The "Law on Tendering and Bidding" as used in this Law belongs to the first level, that is, the law on tendering and bidding formulated and promulgated by the Standing Committee of the National People's Congress. The Law on Tendering and Bidding is a very important law in the legal system of the socialist market economy and the basic law for the entire field of bidding and bidding, and all regulations, rules and normative documents related to tendering and bidding must be consistent with the Law on Tendering and Bidding.

The Law on Tendering and Bidding consists of six chapters and 68 articles. Chapter I is a general provision, which stipulates the legislative purpose, scope of application, scope of compulsory bidding, and basic principles to be followed in bidding and bidding activities; Chapters II to IV stipulate the rules of conduct at each stage of bidding, bidding, bid opening, bid evaluation and bid winning according to the specific procedures and steps of bidding and bidding activities; Chapter V stipulates the legal liability to be borne for violation of the above rules, and the above chapters constitute the substantive content of this Law; Chapter VI is a supplementary provision, which stipulates the exceptions to the application of this Law and the effective date.

Chapter I General Provisions

There are seven articles in total, which stipulate the legislative purpose, scope of application, scope of compulsory bidding, the basic principles to be followed in bidding and bidding activities, and the supervision of bidding and bidding activities.

Article 1 This Law is formulated so as to standardize bidding and bidding activities, protect the interests of the State, the societal public interest and the lawful rights and interests of the parties to bidding and bidding activities, improve economic efficiency, and ensure the quality of projects.

【Interpretation】This article stipulates the legislative purpose of the Law on Tendering and Bidding.

The fundamental purpose of formulating the Law on Tendering and Bidding is to improve the socialist market economic system. The "Ninth Five-Year Plan for National Economic and Social Development and the Outline of Long-term Goals for 2010" proposes to initially establish a socialist market economic system at the end of the Ninth Five-Year Plan. An important feature of the market economy is to give full play to the role of the competition mechanism, so that market players can compete fairly under equal conditions and survive the fittest, so as to achieve the optimal allocation of resources. The procurement method of merit-based competition by bidding is fully in line with the above requirements of the market economy, which through the prior publication of procurement conditions and requirements, a large number of bidders compete according to the same conditions, and the bidders select the contracting party from the series of procedures in accordance with the prescribed procedures, truly realizing the principle of "open, fair and just" market competition. Looking at all countries in the world, most of the countries with relatively sound market mechanisms have a relatively long history of bidding and a relatively perfect legal system for bidding. Therefore, the fundamental purpose of the legislation on bidding and bidding is to maintain the order of equal competition in the market and improve the socialist market economic system.

Proceeding from the above-mentioned fundamental purposes, the direct legislative purpose of the Tendering and Bidding Law has the following four points:

First, standardize bidding and bidding activities. Since the reform and opening up, China's bidding and bidding industry has made great progress, the fields of implementation have been continuously broadened, and the role played by it has become increasingly obvious. However, there are some conspicuous problems in the current bidding and bidding activities, such as: the intensity of the implementation of bidding and bidding is not enough, many units are unwilling to bid or try to avoid bidding; the bidding and bidding procedures are not standardized, the practices are not uniform, there are many loopholes, and many projects have the name of bidding but not the fact of bidding; the improper transactions and corruption phenomena in bidding and bidding are relatively serious, and illegal and criminal acts such as eating kickbacks and trading money and power occur from time to time; the government and enterprises are not separated, and there is too much administrative interference in bidding and bidding activities; the administrative supervision system is not smooth, and the responsibilities are unclear. To some extent, local protectionism and sectoral protectionism have been fostered. Therefore, regulating bidding and bidding activities in accordance with the law is one of the main legislative purposes of the Law on Bidding and Bidding. For this purpose, the Tendering and Bidding Act regulates the tendering and bidding procedures in a larger section (Chapter III, Article 41) and the legal liability for violation of these procedural rules in Chapter V.

Second, improve economic efficiency. The biggest feature of bidding is that through centralized procurement, a large number of bidders compete to obtain the best goods, works or services at the lowest or lower prices. In Western market economies, since the procurement funds of the government and the public sector mainly come from the taxes and donations of enterprises and citizens, improving procurement efficiency and saving expenses is an inevitable requirement of taxpayers and donors for the government and the public sector. As a result, tendering and bidding are widely practised in the areas of government and public procurement in these countries, and tendering has gradually become a procurement system commonly used in countries with market economies. Since the early 1980s, China has introduced a bidding and bidding system, and has successively implemented it in the fields of foreign loans, import of mechanical and electrical equipment, contracting for construction projects, allocation of scientific research projects, and allocation of quotas for export commodities, and has achieved good economic and social benefits. Taking engineering construction and imported mechanical and electrical equipment as an example, according to incomplete statistics, through bidding, the capital saving rate of project construction reaches 1%-3%, and the construction period is shortened by 10%; the capital saving rate of imported mechanical and electrical equipment reaches 15%, and the exchange rate is 10%. Therefore, the formulation of the Law on Bidding and Bidding and the implementation of the bidding system in accordance with the law are of extremely great significance to ensuring the effective use of state-owned funds and improving investment efficiency. From this end, the Law on Tendering and Bidding provides in particular for a compulsory tendering system, that is, it stipulates that certain types of projects must be carried out through bidding, otherwise the project unit will bear legal responsibility (see Article 3 for details, which will be discussed in detail below).

Third, ensure the quality of the project. Since the characteristics of bidding are openness, fairness and impartiality, the procurement activities are placed in a transparent environment, which effectively prevents the occurrence of corrupt acts and ensures the quality of procurement projects such as engineering and equipment. In a sense, how well the bidding system is implemented is the key to whether the quality of the project can be guaranteed. Judging from the major project quality accidents that have occurred in China in recent years, most of them are due to poor implementation of the bidding system, insider trading, and illegal operations, so that the construction team without qualifications or insufficient qualifications contracts projects, resulting in a decline in the quality of construction projects and the continuous occurrence of accidents. Therefore, through the implementation of bidding and bidding, the selection of suppliers and contractors who truly meet the requirements, so that the quality of the project can be guaranteed, is one of the main purposes of the formulation of the "Tendering and Bidding Law". Article 3 of the Law on Tendering and Bidding specifically points out that large-scale infrastructure, public utilities and other projects related to the public interest and public safety, projects invested by state-owned funds and financed by the state, and projects using loans and aid funds from international organizations or foreign governments must be tendered. The quality of these projects is not only related to the effective use of national construction funds, the safety of people's lives and property, but also the country's external image. It is precisely for this reason that the Law on Tendering and Bidding places special emphasis on the bidding of these types of projects, and from the perspective of ensuring the quality of projects, strict bidding procedures are stipulated.

Fourth, protect the national interests, the societal public interest and the lawful rights and interests of the parties to bidding and bidding activities. This legislative purpose extends from the first three purposes. Whether it is to standardize bidding and bidding activities, or to improve economic benefits, or to ensure the quality of projects, the ultimate purpose is to protect the interests of the state, the social public interest, and to protect the legitimate rights and interests of the parties to the bidding and bidding activities. Only under the condition that bidding and bidding activities can be standardized, economic benefits can be improved, and the quality of projects can be guaranteed, the interests of the state, the public interest and the legitimate rights and interests of the parties can be safeguarded. Therefore, protecting the interests of the state, the public interest and the legitimate rights and interests of the parties is the most direct legislative purpose of the Law on Tendering and Bidding. Proceeding from this purpose, Chapter V of the Law on Tendering and Bidding provides penalties for various illegal acts such as circumvention of bidding, collusion in bidding, and transfer of winning projects, and through the supervision of administrative supervision departments in accordance with the law (Article 7), the parties are allowed to raise objections or complaints (Article 65) to protect the interests of the State, the societal public interest and the legitimate rights and interests of the parties.

Article 2 This Law shall apply to tendering and bidding activities carried out within the territory of the People's Republic of China.

【Interpretation】This article stipulates the scope of application and applicable objects of the Law on Tendering and Bidding.

Clearly stipulating the scope of adjustment of the law, that is, the social relations regulated and regulated by the law, is one of the basic principles of legislation. Each law has its own scope of adjustment because of the different adjustments and regulated social relations. The scope of adjustment of the Law on Tendering and Bidding is limited to tendering and bidding activities that occur within the territory of the People's Republic of China. This provision should be understood mainly from the following aspects:

First, the spatial validity of the Law on Tendering and Bidding. The Law on Tendering and Bidding applies to all areas of the People's Republic of China. However, there are a few points that need special attention: First, the "territory" here includes Hong Kong and Macao in terms of territorial scope, but since China implements "one country, two systems" for Hong Kong and Macao, according to article 18 of the Basic Law of the Hong Kong Special Administrative Region and article 18 of the Basic Law of the Macao Special Administrative Region, national laws are not implemented in the Special Administrative Region except for those listed in Annex III to the Basic Law. The Law on Tendering and Bidding is not in the scope of implementation. Second, the Law on Tendering and Bidding only applies to bidding and bidding activities carried out within the territory of China, including all kinds of bidding activities carried out by state organs (organs of power at all levels, administrative organs and judicial organs and their subordinate institutions), state-owned enterprises and public institutions, foreign-invested enterprises, private enterprises and other entities, and does not apply to domestic enterprises bidding outside the territory of the People's Republic of China. When a domestic enterprise bids abroad, the laws of the country where it is located shall apply. Third, as the basic law regulating bidding and bidding activities, the Law on Bidding and Bidding occupies the highest position in the bidding legislative system, and departmental and local regulations and rules must not contradict it.

Second, the applicable objects of the Law on Tendering and Bidding. The object of application of the Law on Tendering and Bidding is tendering and bidding activities, that is, the act of the tenderer announcing in advance the procurement conditions and requirements for goods, works and services, attracting a large number of bidders to participate in the competition, and selecting the transaction object in accordance with the prescribed procedures. Cargo refers to a wide variety of goods, including raw materials, products, equipment and solid, liquid or gaseous objects and electricity, as well as incidental services to the supply of goods. Engineering refers to all kinds of housing and civil engineering construction, equipment installation, pipeline laying, decoration and other construction and ancillary services. Service refers to any procurement object other than goods and works, such as survey, design, consulting, supervision, etc. In addition, article 7 of this law provides for administrative supervision, so strengthening the supervision of bidding and bidding activities is also a very important element. In short, the adjustment objects of the Tendering and Bidding Law include activities in all aspects of bidding, bidding, bid opening, bid evaluation, and bid determination, as well as the administrative supervision and standardization of bidding and bidding activities by government departments.

Third, the scope of application of the Law on Tendering and Bidding. Judging from the provisions of this Article, the Law on Tendering and Bidding shall apply to all tendering and bidding activities carried out within the territory of the People's Republic of China. This includes not only the activities listed in this Law that must be tendered, but also all tendering activities other than those that must be tendered. That is to say, the relevant provisions of the Law on Tendering and Bidding shall apply to all bidding activities carried out in China, regardless of the nature of the bidding subject, the nature of the funds for bidding and procurement, and the nature of the bidding and procurement projects. Specifically, in terms of the main body, it includes bidding by government agencies, state-owned enterprises and institutions, collective enterprises, private enterprises, foreign-invested enterprises and other unincorporated organizations; from the perspective of the source of project funds, including the use of state-owned funds, loans and assistance funds from international organizations or foreign governments, enterprises' own funds, commercial or policy loans, and consumer funds included in the financial budget of government organs or institutions; and from the perspective of procurement objects, including projects (construction, reconstruction, demolition, Tender procurement of repairs or refurbishments and pipeline laying, decoration, etc.), goods (equipment, materials, products, electricity, etc.), services (consulting, survey, design, supervision, maintenance, insurance, etc.), regardless of the amount of the purchase or the size of the investment. That is to say, as long as the bidding activities are carried out in the territory of our country, they must follow a set of standard procedures, that is, the procedures stipulated in the Law on Tendering and Bidding. However, from the provisions of this Law, there are many provisions that are for compulsory tendering and do not apply to the case of voluntary tendering by the parties. In other words, the procedural requirements for compulsory tendering are more stringent than those for voluntary tendering, and the options for voluntary tendering are more flexible.

Article 3 Tendering shall be conducted for the following engineering construction projects within the territory of the People's Republic of China, including the survey, design, construction, supervision of the project, as well as the procurement of important equipment and materials related to the construction of the project:

(1) Large-scale infrastructure, public utilities, and other projects that have a bearing on the societal public interest and public safety;

(2) Projects that are invested or financed by the State in whole or in part using State-owned funds;

(3) Projects that use loans or aid funds from international organizations or foreign governments.

The specific scope and scale standards of the projects listed in the preceding paragraph shall be formulated by the development planning department of the State Council in conjunction with the relevant departments of the State Council and reported to the State Council for approval.

Where laws or the State Council have provisions on the scope of other projects that must be tendered, follow those provisions.

【Interpretation】This article stipulates the compulsory bidding system and its scope. This is one of the core contents of this law, and it is also one of the provisions that best reflect the purpose of legislation.

Compulsory bidding refers to the provisions of certain types of procurement projects, and all that reach a certain amount must be carried out through bidding, otherwise the procurement unit will bear legal responsibility. From the perspective of various countries, since the funds of the government and the public sector mainly come from taxation, improving the efficiency of the use of funds is an inevitable requirement of taxpayers on the government and the public sector. Therefore, these countries generally implement a bidding system in the field of government procurement and public investment, requiring that government investment projects and privately invested infrastructure projects must implement competitive bidding, otherwise they will not be supported by financial funds or approved by the approval department. Loan funds from international financial organizations such as the World Bank and the Asian Development Bank mainly rely on the financing of international capital markets and the contributions of developed member countries. Therefore, all projects carried out using their loan funds must be tendered in order to ensure the effective use of funds and the open conduct of projects, which is a basic requirement of these international organizations for member States. The World Bank and ADB have also developed special procurement guidelines and procurement guidelines, respectively, which have solidified this requirement in legal form and become a legal obligation of the recipient. By the same token, tenders must be tendered for projects that utilize foreign government loans or aid funds. China is a socialist country based on public ownership, and the construction funds mainly come from state-owned funds, and the best economic benefits must be brought into play. The adoption of legislation to include construction projects carried out with state-owned funds in the scope of compulsory bidding is an important measure to effectively protect state-owned assets.

In the Law on Tendering and Bidding, the scope of compulsory bidding focuses on "engineering construction projects" and is the bidding of the whole process of engineering construction projects, including from survey, design, construction, supervision to the procurement of equipment and materials. Engineering survey refers to the survey, mapping, testing, observation, geological survey, exploration, testing, appraisal, research and comprehensive evaluation of the topography, soil texture, lithology, geological structure, hydrological conditions and various natural geological phenomena of the construction site of the project. Engineering design refers to the preliminary design and construction drawing design carried out before formal construction, as well as the technical design carried out in technically complex and inexperienced projects. Engineering construction refers to the construction of buildings in accordance with the specifications and requirements of the design. Project supervision refers to the owner hiring a supervision unit to consult, consult and supervise the construction activities of the project, and entrusting the performance process of various contracts signed by the owner and a third party for the implementation of the project construction, and entrusting it to it for management. The reason why the law regards the project proposal as the focus of compulsory bidding is because there are many problems in the field of engineering construction at present, which have a very bad impact on the people. One of the most important reasons is that the implementation of bidding and bidding is not effective, and the procedures are not standardized, which breeds a large number of corrupt behaviors. According to the investigation of relevant departments, in engineering construction projects, the selection of survey, design, and supervision units occupies a considerable proportion of the specified method; only part of the procurement of equipment and materials is tendered, and the rest is directly procured by the owner or contractor; although most of the construction links adopt the form of bidding, many are not strictly carried out in accordance with the principle of "openness, fairness and justice". Therefore, it is very urgent to implement a standardized bidding and bidding system. Since 1998, the state has increased investment and accelerated infrastructure construction, so as to stimulate the sustained growth of the national economy. In this situation, it is more urgent to improve the efficiency of the use of funds and ensure the quality of the project. Therefore, it is the trend of the times to formulate the Law on Tendering and Bidding to include engineering construction projects in the scope of bidding that must be conducted. Based on considerations of the source of funds and the nature of the project, the Law defines the projects for which tendering is compulsory as follows:

First, large-scale infrastructure, public utilities and other projects related to social public interests and public safety.

This is a provision based on the nature of the project. Generally speaking, the so-called infrastructure refers to providing basic conditions for the production process of the national economy, which can be divided into productive infrastructure and social infrastructure. The former refers to the facilities provided directly for the production process of the national economy, and the latter refers to the facilities provided indirectly for the production process of the national economy. Infrastructure usually includes energy, transportation, post and telecommunications, water conservancy, urban facilities, environmental and resource protection facilities, etc. The so-called public utilities refer to the services provided for public use to meet the needs of production and life, such as water supply, power supply, heat supply, gas supply, science and technology, education, culture, sports, health, social welfare, etc. Judging from the situation in various countries in the world, due to the large amount of investment in large-scale infrastructure and public utility projects and the long construction cycle, basically state investment is the mainstay, especially public utility projects, and state investment accounts for an absolute proportion. From projectal? In order to ensure the quality of the project and protect the safety of citizens' lives and property, governments generally require bidding and formulate relevant laws. Even private investment in these areas is no exception.

Second, projects that use state-owned funds to invest in or finance in whole or in part.

This is a provision for the source of funds. State-owned funds refer to state financial funds (including budgetary funds and extra-budgetary funds), self-owned funds and loan funds of state organs, state-owned enterprises and institutions and social groups. Among them, state-owned enterprises refer to enterprises owned by the whole people, wholly state-owned companies and state-controlled enterprises, and state-controlled enterprises include enterprises whose state-owned capital accounts for more than 50% of the total capital of the enterprise, and although less than 50%, the investors in state-owned assets are actually enterprises. on the business that has control. Projects invested wholly or partially with state-owned funds refer to all construction projects carried out using state-owned funds (regardless of their proportion in the total investment). State-financed construction projects refer to construction projects carried out using funds raised by the State through the internal issuance of government bonds or the borrowing of sovereign foreign debt from foreign governments and international financial institutions. These funds raised by the state credit as a guarantee and uniformly raised, arranged, used and repaid by the government should also be regarded as state-owned funds.

Third, projects that use loans or aid funds from international organizations or foreign governments.

As mentioned earlier, such projects must be tendered and are generally required by international financial organizations such as the World Bank and foreign governments. China has also endorsed this requirement in bilateral agreements with these international organizations or foreign governments. In addition, most of these loans belong to the sovereign debt of the state, which is borrowed and repaid by the government as a whole, and should be regarded as the same as the investment of state-owned funds in nature. Judging from the current situation in our country, there are four main types of projects carried out using loans from international organizations or foreign governments, including the World Bank, the Asian Development Bank, the Japan Overseas Economic Cooperation Fund, and the Kuwait Arab Economic Development Fund, which are basically used for infrastructure and public utility projects. For these reasons, the Tendering and Bidding Act includes such projects in the scope of compulsory tendering.

It should be pointed out that the above three types of projects are only a large, general scope. The specific scope and scale criteria of the project, that is, the project with a large amount of investment needs to be tendered, the project of what nature needs to be tendered, the equipment and materials with a large amount of procurement need to be tendered, and what kind of equipment and materials need to be tendered, which shall be formulated by the development planning department of the State Council in conjunction with the relevant departments of the State Council, and shall be issued for implementation after approval by the State Council.

Fourth, other projects that must be tendered by law or as stipulated by the State Council.

With the gradual establishment and implementation of the bidding system, the field of bidding and bidding in China has been continuously broadened, and the scope of compulsory bidding will be adjusted according to actual needs. Therefore, in addition to the Law on Bidding and Bidding, other laws and the State Council that have provisions on projects that must be tendered should also be included in the scope of compulsory bidding.

Article 4 No unit or individual may fragment projects that must be tendered in accordance with law or circumvent bidding by any other means.

【Interpretation】This article is derived from Article 3 to ensure the implementation of the compulsory bidding system, and also to provide a basis for the investigation of legal liability.

This article stipulates that for projects that must be tendered in accordance with the Law on Tendering and Bidding and other laws and regulations, no unit or individual may circumvent bidding by reducing it to zero or by any other means. The so-called rounding into zero, that is, the project that reaches the statutory mandatory bidding limit is cut into several small projects, and the amount of each small project is below the statutory bidding limit, so as to achieve the purpose of evading bidding. Such acts are opposed by the countries of the world and the major international organizations, and are clearly stipulated in national laws or international agreements. As stipulated in the EU Procurement Directive applicable to EU-15 countries, contracting bodies may not divide procurement contracts in order to evade the implementation of the Directive, so when a contract is divided into several blocks, the value of each block must be taken into account to determine whether the contract meets the limits set out in the Directive. The World Trade Organization's Government Procurement Agreement also provides that the procuring entity may not divide contracts to avoid the application of the Agreement.

In addition to reducing the project to zero to avoid bidding, there are other ways, such as deliberately prolonging the execution period of the contract and adopting the method of installment payment, so that it is difficult to determine the total amount of the contract; There are many such methods, and new ways and methods will continue to emerge in actual life, and the law cannot enumerate them all, so it is expressed in the term "any other way". It should be pointed out that no matter what the method, as long as the purpose is to circumvent the compulsory tendering system, it is prohibited by law.

Article 5 Bidding and bidding activities shall follow the principles of openness, fairness, impartiality and good faith.

【Interpretation】This article stipulates one of the basic principles to be followed in bidding and bidding activities - the principle of "three publics" and the principle of good faith.

Bidding and bidding is a product of the market economy and develops with the development of the market, and must follow the basic principles of market economic activities. National legislation and international practice generally determine that bidding and bidding activities must follow the "three public" principles of "openness, fairness and justice". For example, the Guidelines for Procurement for Domestic Competitive Tendering for World Bank-Financed Projects provide that: "The principles of this Guide are full competition, openness of procedures, equality of opportunity, fair and uniform treatment of all bidders, and award of contracts to bidders with the lowest evaluation price on the basis of pre-published criteria." The UNCITRAL Model Law on Procurement of Goods, Construction and Services reads in the legislative purpose: "To promote competition among suppliers and contractors for the supply of goods, works or services to be procured, to provide for fair and equal treatment for all suppliers and contractors, to promote honesty and fairness in the procurement process and to enhance public confidence in the procurement process." ”

The so-called "open" principle is to require a high degree of transparency in bidding and bidding activities, and to implement the disclosure of bidding information and bidding procedures, that is, to issue bidding notices, open bids, and disclose the results of winning bids, so that every bidder can obtain the same information and know all the conditions and requirements of bidding. The principle of "equity" requires that all bidders be given equal opportunities to enjoy equal rights and fulfil their corresponding obligations, without discrimination against any party. The principle of "impartiality" requires that all bidders be treated in advance according to the standards published in advance during the evaluation of bids. In view of the importance of the "Three Gongs" principle in bidding and bidding activities, the Law on Bidding and Bidding has always taken it as the main line and embodied it in the general provisions and various articles of the chapters.

The so-called principle of good faith, also known as the principle of good faith, is one of the basic principles of civil activities. Article 4 of the General Principles of the Civil Law of the People's Republic of China stipulates that "civil activities shall follow the principles of voluntariness, fairness, equal remuneration, and good faith." The meaning of this principle is that the parties to the tender and bidding shall exercise their rights and perform their obligations in an honest and bona fide manner in order to maintain the balance of interests of both parties, as well as the balance between their own interests and the interests of society. In the relationship of interests between the parties, the principle of good faith requires respect for the interests of others, the attention to their own affairs to others, and to ensure that each other can get the benefits they deserve. In the relationship between the interests of the parties and society, the principle of good faith requires that the parties must not harm the interests of third parties and society through their own activities, and must exercise their rights within the scope of the law in a manner consistent with their socio-economic objectives. Proceeding from this principle, the Tendering activities stipulate that bidding must not be circumvented, collude in bidding, disclose bid bases, fraudulently obtain winning bids, subcontract contracts, etc., requiring the parties to comply with them, and stipulating corresponding penalties (Chapter V).

Article 6 For projects that must be tendered in accordance with law, their bidding and bidding activities shall not be restricted by regions or departments. No unit or individual may illegally restrict or exclude legal persons or other organizations outside the region or system from participating in bidding, and must not illegally interfere in bidding and bidding activities in any way.

【Interpretation】This article stipulates another basic principle of bidding and bidding activities - no departmental or local protection, no illegal interference.

First, tendering and bidding activities are not restricted by regions or departments. Under the market economic system, economic activities should follow the requirements of the law of value, and allocate resources to links with good efficiency through price leverage and the function of competition mechanism. As a product of the market economic system, the biggest feature of bidding is that through full competition, the factors of production can be freely flowed and combined between different departments and regions, so as to meet the requirements of bidders to obtain high-quality and low-cost goods, projects and services. Therefore, a unified, open and competitive market, without any form of restriction, monopoly or interference, is the external environment and precondition for the bidding to play a role. Based on this consideration, the first sentence of this article specifically stipulates that the bidding activities of projects that must be tendered according to law shall not be restricted by regions or departments. It should be noted that this requirement is for "projects that must be tendered according to law", that is, the compulsory tendering projects listed in article 3 of the Tendering and Bidding Law, and do not apply to other tendered projects.

Second, no unit or individual may illegally restrict or exclude legal persons or other organizations outside the region or system from participating in bidding. This is the main form of restriction on tendering and bidding activities. Judging from the bidding situation in China in recent years, this phenomenon is relatively common and more serious. In some places, the project construction, from the commander to the design institute, the supervision office, and the construction team, is basically their own family, "one-stop" operation, and foreign enterprises cannot participate in the competition. Some provinces and cities have also issued documents that only construction enterprises in their own provinces are eligible to participate in bidding. The consequences of this kind of departmental monopoly, local protection, land-drawing, and inbreeding are quite serious, and have become the catastrophic source of some major and vicious engineering quality accidents. However, it should be emphasized that what is prohibited here is to illegally restrict or exclude legal persons or other organizations outside the region or the system from participating in the bidding, and it is not excluded that due to some special circumstances (such as the technical complexity of the bidding project, the strong professionalism, or the restrictions of the natural area and geographical environment, etc.), the bidding project is only suitable for the bidding project to be undertaken by the region or the enterprise of the system.

Third, no unit or individual may illegally interfere in bidding and bidding activities in any way. In addition to restricting or excluding legal persons or other organizations outside the region or system from participating in bidding, some units or individuals have also illegally interfered in bidding and bidding activities in other ways. For example, to greet the project owner or the bidding committee, or to suggest a local enterprise; to enable its subordinate units to contract the project, adopt a one-on-one bid negotiation method; open a side of the qualification review to secretly protect the local enterprise; artificially divide the bidding section so that large enterprises in the field cannot bid; arbitrarily change the winning bid result or designate the winning unit to let the unqualified enterprise win the bid; and after the bidding, the bidding section is re-demarcated to designate subcontracting to local and system enterprises Compulsory bidding units to entrust agents or designate agencies for bidding units; enterprises from outside the field or outside the system are not restricted from participating in bidding, but are forced to form consortiums with local enterprises to bid, or to give local enterprises a considerable amount of preferential treatment in the evaluation of bids in order to win the bids; etc. There are many similar situations that cannot be enumerated. Accordingly, this article provides in principle that "tendering and bidding activities shall not be unlawfully interfered with in any way". It should be pointed out that what is prohibited here is "illegal interference", which does not include the supervision of bidding and bidding activities by the relevant administrative departments in accordance with the law.

Article 7 Bidding and bidding activities and their parties shall accept supervision carried out in accordance with law.

Relevant administrative supervision departments shall supervise bidding and bidding activities in accordance with law, and investigate and deal with illegal acts in bidding and bidding activities in accordance with law.

The administrative supervision of bidding and bidding activities and the specific division of powers of relevant departments shall be prescribed by the State Council.

【Interpretation】This article is about the implementation of administrative supervision over bidding and bidding activities.

First, bidding and bidding activities and their parties shall be subject to supervision carried out in accordance with law. This Law provides for a compulsory bidding system, which is mainly aimed at infrastructure and public utility projects related to the public interest and public safety, and projects carried out using state-owned funds or loans and assistance funds from international organizations and foreign governments. Since these projects are related to the national economy and people's livelihood, the government must monitor them as necessary, and bidding activities are an important part of them. At the same time, the establishment of the compulsory bidding system makes the parties have no right of autonomy between bidding and non-bidding, that is to say, it gives the parties a mandatory obligation, and must take the initiative and consciously accept supervision. This gives the Law on Tendering and Bidding a certain administrative color.

Second, the administrative supervision department shall supervise the bidding and bidding activities in accordance with the law, and investigate and deal with the illegal acts in the bidding and bidding activities according to law. The specific contents of supervision include: whether the projects that must be tendered in accordance with the "Law on Tendering and Bidding" and other laws and the provisions of the State Council have been tendered; whether the bidding method conducive to competition has been selected in accordance with the provisions of the "Law on Tendering and Bidding"; whether the procedures and rules stipulated in the "Law on Tendering and Bidding" have been strictly implemented in the projects that have been tendered, and whether the principles of openness, fairness, impartiality, and good faith have been embodied; and so on. At the same time, the administrative supervision department may investigate and punish violations of the Law on Tendering and Bidding in accordance with the law on the basis of the results of supervision and inspection or the complaints of the parties (Article 65). It should be pointed out that the supervision here must be "carried out in accordance with the law" and cannot become a disguised administrative interference; the punishment must also be "carried out in accordance with the law", and cannot be without a statutory basis or without compliance with legal procedures. The parties to tendering and bidding have the right to refuse the supervision of the administrative department in violation of the law, or to impose administrative penalties in violation of the law, and may obtain relief in accordance with the relevant provisions of the Administrative Reconsideration Law, the Administrative Procedure Law and the State Compensation Law.

Third, the State Council shall prescribe the administrative supervision of bidding and bidding activities and the specific division of powers of relevant departments. Due to the relatively wide range of fields in which bidding and bidding are carried out, some are more professional, and many departments are involved, it is impossible for one department to conduct unified supervision, and only according to the different characteristics of different projects, the relevant departments are responsible for supervision within their respective areas of competence. According to the provisions of the Constitution and the Organic Law of the State Council, the power to divide the responsibilities of various departments of the State Council belongs to the State Council. In addition, since the division of management powers of various departments will be adjusted with the deepening of the reform of government agencies, the specific management responsibilities of each department stipulated in the law will affect the stability of the law. Based on the above considerations, the last paragraph of this article stipulates that "the administrative supervision of bidding and bidding activities and the specific division of powers of relevant departments shall be prescribed by the State Council." ”

Chapter II: Bidding

This chapter deals with the first link in tendering and bidding activities, the procedural provisions for tendering.

Competitive procurement is one of the most competitive forms of procurement. Compared with other procurement methods, tender procurement should have at least the following elements: (1) procedural specifications. In the bidding and bidding activities, from bidding, bidding, bid evaluation, bid determination to signing contracts, each link has strict procedures and rules. These procedures and rules are legally binding and cannot be changed arbitrarily by the parties. (2) Preparation of bidding and bidding documents. In the bidding and bidding activities, the bidder must prepare the bidding documents, the bidders prepare the bidding documents to participate in the bidding, and the bidder organizes the bid evaluation committee to evaluate and compare the bidding documents, from which the successful bidder is selected. Therefore, the preparation of tendering and bidding documents is one of the most important characteristics that distinguish bidding from other procurement methods. (3) Openness. The basic principle of tendering and bidding is "openness, fairness and impartiality", placing procurement in a transparent environment and preventing the occurrence of corrupt practices. This principle is reflected in all aspects of tendering and bidding activities: the tenderer shall first publish a tender notice in the designated press or other media inviting all potential bidders to participate in the tender; In this way, bidding and bidding activities are completely placed under the public supervision of society, which can prevent improper trading behavior. (4) One transaction. In general trading activities, buyers and sellers often have to negotiate many times before they can close the deal. Tendering is different. After the bidder submits the bidding documents and until the successful bidder is determined, the bidder shall not negotiate with the bidder on the substantive content such as the bidding price. That is to say, the bidder can only make an offer once, cannot bargain with the bidder, and uses this quotation as the basis for signing the contract. The above four elements basically reflect the essence of bidding and procurement, and are also the standards and basis for judging whether a procurement activity is a bidding procurement.

A complete bidding and bidding process, including five links: bidding, bidding, bid opening, bid evaluation and bid determination. As the starting step, whether the procedures are standardized or not is directly related to whether the various links can be carried out smoothly in the future, which is of great significance to the entire bidding process. This chapter consists of seventeen articles, which mainly stipulate the definition of the tenderer, the conditions of the tendering project, the bidding method, the status of the bidding agency, the conditions for establishment and the qualifications, the issuance of the bidding announcement and the invitation to bid, the qualification examination of potential bidders, the preparation, clarification or modification of the bidding documents, etc.

Article 8 A tenderer is a legal person or other organization that submits a tendered project or conducts a tendering in accordance with the provisions of this Law.

【Interpretation】 This article explains the concept of "bidder", that is, in accordance with the provisions of the Law on Tendering and Bidding, the legal person or other organization that proposes the tender project or conducts the tender. To understand this concept correctly, we must grasp the following points:

First, the tenderer must be a legal person or other organization. According to Article 17 of the General Principles of the Civil Law of the People's Republic of China, a legal person refers to an organization that has the capacity for civil rights and civil conduct, and enjoys civil rights and undertakes civil obligations in accordance with law, including enterprise legal persons, organ legal persons, public institution legal persons and social group legal persons. A legal person must meet the following conditions: (1) It must be established according to law. This condition has a twofold meaning, one is that its establishment must be legal, the purpose and purpose of its establishment must conform to the requirements of the national and social public interests, and the organizational structure, establishment method, business scope, and business mode must meet the requirements of the law. Second, the procedures for reviewing and registering the establishment of a legal person must comply with the requirements of the law, that is, the procedures for the establishment of a legal person must be legal. According to the current regulations, an enterprise can obtain legal personality only after being approved by the competent department and approved by the administrative department for industry and commerce. Organs with independent funds shall have the status of legal persons from the date of establishment. Where public institutions or social groups do not need to go through legal person registration in accordance with law, they have legal person qualifications from the date of establishment; where registration as legal persons is required in accordance with law, they acquire legal person status after approval of registration. (2) Must have the necessary property (enterprise legal person) or funds (organs, social organizations, public institution legal persons). This is the material basis for social organizations as legal persons to independently participate in economic activities, enjoy civil rights and bear civil obligations, and it is also the material guarantee for them to bear civil liability. Except as otherwise provided by law, enterprise legal persons owned by the whole people bear civil liability for the property granted to them by the State for operation and management, and legal persons of enterprises under collective ownership, Sino-foreign joint ventures (cooperative) enterprises and legal persons of foreign-funded enterprises bear civil liability with the property owned by enterprises. Limited liability companies and joint-stock limited companies are liable for the debts of the company with all their assets. (3) Have their own name, organizational structure and place. The name of a legal person is a sign that it has a personality independent of its members, and it is also the carrier of its goodwill, which should include the location, the form of responsibility, the scope of business, etc., so as to facilitate the contact and identification of the transaction counterparty. The soundness of the legal person's organizational structure is a necessary condition for it to carry out its normal activities, and it should include the organs of power, the enforcement organs, and the supervision organs, etc., to restrain and cooperate with each other, so that the meaning of the legal person can be generated and correctly implemented. In order to establish a focal point of activity for contacts with various parties and to carry out business activities, legal persons must have their own premises, including domicile (where the main office is located), other locations where they engage in business activities and the location of branches. (4) Be able to bear civil liability independently. In the event of a dispute or controversy arising in economic activities, a legal person may sue or respond to a lawsuit in its own name and use its own property as a means of security for its own debts.

Other organizations refer to organizations that do not have the conditions for legal persons. It mainly includes: branches of legal persons; joint ventures between enterprises or between enterprises and public institutions, organizations that do not have the conditions for legal persons; partnership organizations; individual industrial and commercial households; and rural contracted business households.

Second, the tenderer must propose the tender project and conduct the tender. The so-called "proposed bidding project" means that according to the actual situation and the relevant provisions of the "Bidding and Bidding Law", the project to be proposed and determined, the relevant examination and approval procedures are handled, and the source of funds for the project is implemented. "Conducting bidding" refers to proposing a bidding plan, formulating or deciding on the method of bidding, preparing bidding documents, issuing bidding announcements, reviewing the qualifications of potential bidders, presiding over the opening of bids, forming a bid evaluation committee, determining the successful bidder, and concluding a written contract. These tasks can be handled by the tenderer himself or entrusted to the tendering agency. Even if it is handled by a tendering agency, it represents the will of the tenderer and acts within the scope of its authorization, and is still considered to be the tenderer "conducting the tender".

Article 9 Where a bidding project needs to perform the project examination and approval formalities in accordance with the relevant provisions of the State, it shall first perform the examination and approval formalities and obtain approval.

The bidder shall have the corresponding funds for the bidding project or the source of funds has been implemented, and shall truthfully indicate it in the bidding documents.

【Interpretation】This article stipulates the preparatory work to be completed before the commencement of the bidding procedure and the relevant conditions to be met. There are two main items: one is to perform the approval procedures, and the other is to implement the source of funds.

First, tendering projects that need to perform examination and approval procedures in accordance with national regulations shall first perform the examination and approval procedures. Judging from the provisions of Article 3 of this Law, the scope of compulsory bidding includes large-scale infrastructure and public utility projects, projects that use state-owned funds to invest or finance in whole or in part, projects that use loans and aid funds from international organizations or foreign governments, and other projects that must be tendered according to laws and the State Council. According to the current investment and financing management system, most of these projects need to be examined and approved by the State Council, the relevant departments of the State Council or the relevant departments of provinces and municipalities. Bidding can only be carried out after the review and approval of the relevant departments, and the construction funds or sources of funds have been implemented. Where there are requirements for the conditions for starting construction, the formalities for starting construction must also be performed. In addition, for projects that do not fall within the scope of compulsory bidding, but require the government to balance construction and production conditions, or projects that are restricted by the state, or projects that are restricted by the state, or projects with foreign investment in Taiwan, Hong Kong, Macao and foreign investment, they must also be examined and approved in accordance with relevant regulations. These projects are also subject to approval procedures and approval before they can be tendered. It should be pointed out that not all bidding projects need to be approved, and only those who "need to perform the approval procedures in accordance with the relevant provisions of the state" should first perform the approval procedures and obtain approval, otherwise they shall not be allowed to bid. Judging from the situation of the implementation of bidding and bidding in China, some localities or departments have begun to sell tenders without performing the approval procedures or have not been approved after submitting for approval; This is a procedural violation and can cause unnecessary damage if the project is not approved. According to the provisions of the General Principles of Civil Law that "invalid civil acts have no legal binding force from the beginning of the act", the interests of the bidding enterprise and the winning enterprise cannot be guaranteed at all. Therefore, when participating in the bidding of projects requiring the fulfillment of approval procedures, enterprises should pay special attention to whether the bidding projects have been reviewed and approved by the relevant departments.

Second, the bidder shall have the corresponding funds or sources of funds for the bidding projects that have been implemented and truthfully stated in the bidding documents. Due to the relatively long construction period of some projects, the performance period of the winning contract is also relatively long. In practice, it often happens that the contract is in the process of being executed, due to various reasons, the funds cannot be in place, the project unit cannot pay the construction enterprise or the supplier enterprise with the price, and even requires the enterprise to advance the money first, resulting in the contract cannot be successfully performed, and the project has become a "beard project". Some project units take advantage of their own advantageous position under the conditions of the "buyer's market" to issue bidding announcements when there is no construction fund at all or the construction funds have not yet been implemented, requiring the bidding enterprises to bring funds to bid, which damages the interests of the bidding enterprises and also causes many disputes. In order to put an end to this phenomenon and protect the legitimate rights and interests of bidding enterprises in accordance with the law, the second paragraph of this article stipulates that "the bidder shall have the corresponding funds or sources of funds for the bidding project that has been implemented", and requires "it to be specified in the bidding documents" so that the bidding enterprise can understand and grasp it, and serve as the basis for decision-making on whether to bid. The so-called "corresponding funds or sources of funds for bidding projects have been implemented" means that the funds required for the procurement of a single construction project, goods or services have been in place, or although the funds are not in place, the source has been implemented, such as a bank has promised a loan. For example, if the funds used for the design of a construction project have been secured, a design tender can be conducted.

Article 10 Bidding is divided into open bidding and invitation to bid.

Public bidding refers to the invitation of an unspecified legal person or other organization to bid by a tenderer in the form of a tender announcement.

Invitation to tender means that the tenderer invites a specific legal person or other organization to bid in the form of a tender invitation to bid.

【Interpretation】This article stipulates two methods of bidding - public bidding and invitation to bid.

Judging from the situation in various countries in the world, there are two main ways of bidding: open bidding and invitation to bid. Public bidding is a bidding method in which the bidder publishes the bidding announcement in the designated newspaper, electronic network or other media, attracts a large number of bidders to participate in the bidding competition, and the bidder selects the winning bidder from which the bidder selects the best. Invitation to tender, also known as selective bidding, by the tenderer according to their own experience and relevant suppliers, contractor information, such as corporate reputation, equipment performance, technical strength, past performance, etc., to select a certain number of enterprises (generally should invite 5-10 is appropriate, not less than 3), to issue a tender invitation, invite them to participate in the bidding competition. The main difference between these two methods is: (1) the way of publishing information is different. Public tenders are issued in the form of announcements, and invitations to tender are issued in the form of invitations to tender. (2) The range of choices is different. Public tendering, which uses the form of a tender announcement, is directed at all potential legal persons or other organizations interested in the tendering project, and the tenderer does not know the number of bidders in advance; (3) The scope of competition is different. Since open tendering gives all eligible legal persons or other organizations the opportunity to participate in the tender, the scope of competition is wider and the competitiveness is more fully reflected, and the tenderers have absolute room for choice and are prone to the best tendering results; (4) The degree of disclosure is different. In public tendering, all activities must be carried out in strict accordance with pre-specified and well-known procedures and standards, which greatly reduces the possibility of cheating; (5) Time and cost are different. Since the invitation to tender is not announced, only a few bidding documents are sent, which greatly shortens the time of the entire bidding and the corresponding reduction of the bidding costs. The procedure for public bidding is more complicated, from the announcement, the bidder's response, the evaluation of the bid, to the signing of the contract, there are many time requirements, to prepare many documents, so it takes a long time and the cost is relatively high.

It can be seen that the two bidding methods have their own advantages, and compared from different angles, different conclusions will be drawn. In practice, the practices of States or international organizations are also inconsistent. Some did not give tendentious opinions, but gave their discretion to the bidder, who decided to use the method of disclosure or invitation according to the characteristics of the project, as long as it did not violate the law and achieved "openness, fairness and justice" to the greatest extent. For example, the EU Procurement Directive provides that if the purchase amount reaches the statutory tendering limit, the procuring unit has the right to choose freely between open and invited tendering. In fact, invitations to tender are widely used in EU countries. The World Trade Organization's "Government Procurement Agreement" has also adopted a non-negotiable attitude towards the advantages and disadvantages of these two approaches. However, the World Bank Procurement Guides include international competitive tendering (open tendering) as the most adequate way to meet the economic and efficiency requirements of funds, requiring borrowing countries to use it as the most basic procurement method. Other modalities may be used only if international competitive tendering is not the most economical and efficient.

Article 11 Where key national projects determined by the development planning department under the State Council and local key projects determined by the people's governments of provinces, autonomous regions, or municipalities directly under the Central Government are not suitable for public bidding, invitation to bid may be conducted upon approval by the development planning department under the State Council or the people's governments of provinces, autonomous regions, or municipalities directly under the Central Government.

【Interpretation】The essence of this article stipulates that key projects must be publicly tendered.

First, national and local key projects should be publicly bidded. National key construction projects refer to backbone projects that have a major impact on national economic and social development identified from large and medium-sized national capital construction projects, and are determined by the development planning department of the State Council in consultation with the relevant competent departments of the State Council. Local key construction projects refer to backbone projects identified from large and medium-sized capital construction projects determined by localities that have a major impact on the economic and social development of the region, and are determined by the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government. It can be seen from this that key construction projects should have at least two criteria: one is to meet the large or medium-sized standards stipulated by the state in terms of investment scale; the other is to have a major impact on the national economy or the economic and social development of the region in terms of actual role. Most of these projects are infrastructure, basic industries and pillar industry projects, or high-tech projects that can drive technological progress in the industry. In order to ensure the management of key construction projects, to ensure the quality of key construction projects and to complete construction on schedule, it is necessary to adopt the method of public bidding. Because open bidding has more advantages in transparency and competitiveness, it can better reflect the purpose and purpose of the bidding system. The Measures for the Administration of National Key Construction Projects, promulgated and implemented in 1996, stipulate that the design, construction, supervision and equipment procurement of the main projects of the national key construction projects shall be publicly bidded by the legal person of the construction project in accordance with the law, and the winning bidder shall be selected on the basis of merit. This system is further confirmed by the Tendering and Bidding Act.

Second, key projects that are not suitable for public bidding may be invited to bid upon approval. In some specific cases, such as due to the technical complexity or special requirements of the project, involving the protection of patent rights, limited by natural resources or the environment, new technologies or technical specifications are difficult to determine in advance, etc., the number of qualified bidders to choose from is limited, and it is not appropriate or feasible to conduct public bidding. In such a case, the tenderer may choose another method of tendering provided for in Article 10 of this Law - invitation to tender. The number of bidders invited to tender is limited, the openness and competitiveness are far less than that of public bidding, it is easy to produce illegal operations and insider trading, and if strict supervision is not carried out, it will bring irreparable losses to the construction of key projects. Considering that the national key projects and local key projects are determined by the development planning department of the State Council and the people's governments of provinces, autonomous regions and municipalities directly under the Central Government respectively, it is more appropriate for the project determination department to exercise the right to supervise the invitation to bid. Therefore, this article stipulates that if it is not suitable for public bidding, it may be invited to bid upon approval by the development planning department under the State Council or the people's government of a province, autonomous region or municipality directly under the Central Government.

Article 12 The tenderer has the right to choose a tendering agency on its own and entrust it to handle the tendering matters. No unit or individual may appoint a bidding agency for the bidder in any way.

Where the tenderer has the ability to prepare bidding documents and organize bid evaluation, he may handle the bidding matters on his own. No unit or individual may compel them to entrust a bidding agency to handle bidding matters.

For projects that must be tendered according to law, where the tenderer handles the bidding matters on his own, he shall file a record with the relevant administrative supervision department.

【Interpretation】This article is about the provisions on entrusting agents to bid and bidding by bidders themselves.

First, the tenderer may entrust the tendering agency to handle the tendering matters. A tendering agency refers to an intermediary agency entrusted by the tenderer to engage in the activities of the tendering organization on behalf of the tenderer. Our country began to conduct bidding activities in the early 1980s, initially mainly with the use of World Bank loans for project bidding. Due to the fact that some project units have little understanding of bidding and bidding, and lack of specialized personnel and skills, a number of institutions specializing in bidding business have emerged. Established in 1984, China Technology Import and Export Corporation International Bidding Company (later renamed Zhongji International Bidding Company) is the first bidding agency in China. With the continuous development of the bidding and bidding industry, international financial organizations and foreign government loan project bidding, imported mechanical and electrical equipment bidding, domestic complete sets of equipment bidding and other industries have set up full-time bidding institutions, in the bidding and bidding activities have played an active role. At present, there are hundreds of institutions specializing in bidding agency business in the country. These tendering agencies have specialized talents and rich experience, which is very attractive to those project units that are new to tendering, have few bidding projects or lack their own strength. In order to give full play to the role of the agency in bidding and bidding and promote its healthy and rapid development, the first paragraph of this article stipulates that "the bidder has the right to choose the bidding agency on its own and entrust it to handle the bidding matters." It should be emphasized that "self-selection" means that the tenderer has absolute autonomy in the selection of the agency, and is not affected or interfered with by other organizations or individuals. Where any unit or individual appoints a bidding agency for the bidder in any way, the bidder has the right to refuse. To this end, the last sentence of this paragraph particularly emphasizes: "No unit or individual may appoint a tendering agency for the tenderer in any way." ”

Second, if the bidder has the ability to prepare bidding documents and organize bid evaluation, he may handle the bidding matters on his own. In recent years, with the continuous maturity of market players and the continuous improvement of market rules, as well as the increasing role of bidding in saving funds and ensuring quality, some large enterprise groups with many daily bulk material procurement tasks have set up their own bidding institutions and teams, and have achieved good economic benefits through bidding and purchasing raw materials and equipment required for daily production of enterprises. It can be said that at present, what is presented in China's bidding industry is a pattern in which agencies organize bidding and enterprises organize bidding on their own. Proceeding from this reality, the Law on Bidding and Bidding also affirms the independent bidding of enterprises and restricts the conditions for independent bidding of enterprises. That is, as stipulated in paragraph 2 of this article, "Where the tenderer has the ability to prepare bidding documents and organize bid evaluation, he may handle the bidding matters on his own." "Here it points out two conditions that the tenderer must have to handle the tender by himself, one is the ability to prepare the tender documents, and the other is the ability to organize the evaluation of the bid. These two conditions cannot be met and must be handled by an agency. The reason for this provision is that if those project units that are not familiar with the bidding procedure and do not have the ability to bid themselves are allowed to organize bidding, it will affect the standardization and proceduralization of the bidding work, and then affect the quality of bidding and the smooth implementation of the project. In addition, it is also possible to prevent project units from taking advantage of the opportunity of self-bidding to carry out bidding in the name of bidding without bidding. In view of the situation that some localities and departments illegally interfere in bidding and bidding activities in real life and force bidding units to entrust bidding agencies to handle bidding matters, this paragraph particularly emphasizes: "No unit or individual may force them to entrust bidding agencies to handle bidding matters." ”

Third, for projects that must be tendered according to law, if the bidder handles the bidding matters on his own, he shall file a record with the relevant administrative supervision department. "Projects for which tendering is required by law", i.e. compulsory tendering projects listed in article 3 of the Law on Tendering and Bidding. In order to ensure that such bidding projects achieve good results, it is necessary to strictly control the threshold of bidders bidding on their own. Therefore, paragraph 3 of this article requires that "for projects that must be tendered according to law, and the tenderer handles the bidding matters on his own, he shall file a record with the relevant administrative supervision department." The implication of this provision is that in compulsory bidding projects, if the bidders handle the bidding matters on their own, they must file with the relevant administrative supervision departments. The administrative supervision department shall, in accordance with the provisions of paragraph 2 of this article, examine whether the bidders have the conditions for bidding on their own. Where the conditions are met, they shall be allowed to handle the bidding matters on their own; if they do not meet the conditions, they shall be required to entrust an agency to handle the bidding matters.

Article 13: Bidding agencies are social intermediary organizations established in accordance with law, engaged in bidding agency business and providing related services.

The bidding agency shall meet the following conditions:

(1) Have a business premises and corresponding funds for engaging in bidding agency business;

(2) Have corresponding professional forces capable of compiling bidding documents and organizing bid evaluation;

(3) There is a pool of experts in technical, economic and other fields who meet the requirements provided for in paragraph 3 of Article 37 of this Law and can be selected as members of the bid evaluation committee.

【Interpretation】This article stipulates the nature and conditions of the bidding agency.

With the development of bidding and bidding work in China, the bidding agency has developed rapidly, the number has shown a continuous upward trend, and the role played by it has become increasingly obvious. However, due to the lack of legal norms and constraints, there are problems in some bidding agencies that are unclear in nature and unclear status. Some act as both managers and operators. If there is a system under the bidding office, as a self-supporting public institution, on the one hand to exercise industry management functions, on the other hand, on the other hand, to replace the owner to engage in specific bidding affairs. Sex? The variety of things and the ambiguity of legal status directly affect the unification and standardization of bidding agency behavior, and also make it impossible for all kinds of agencies to compete fairly on the same starting line, violating the principle of equal competition under the conditions of market economy. To this end, the first paragraph of this article clearly stipulates that a bidding agency is a social intermediary organization established in accordance with law, engaged in bidding agency business and providing related services. To properly understand this provision, the following points must be clarified:

First, the bidding agency must be established in accordance with the law. Establishment in accordance with law is a formal requirement for the establishment of any social organization. Due to the different nature and business scope of social organizations, the procedures for their establishment are also different, but they must be established according to law. The meaning of establishment according to law is that the purpose and purpose of the establishment of the institution must meet the requirements of the national and social public interests; the organizational structure, establishment method, business scope, and business mode must comply with the requirements of the law; and the relevant establishment procedures should be handled in accordance with the review and registration procedures prescribed by law.

Second, the tendering agency must engage in the tendering agency business and provide related services. This is the substantive requirement of the tendering agency. The main business of the bidding agency includes: preparing bidding documents for the bidder, reviewing the qualifications of the bidder, organizing the evaluation of the bid according to the procedure, coordinating the relationship between the bidder and the successful bidder, supervising the performance of the contract, and providing post-purchase services to the bidder. Some of these services belong to the strict sense of the tender agency, and some are other services related to the tender agency. Any organization that provides the above services and is established by law may become a tendering agency. The tendering agency may charge a certain fee to the tenderer according to the size of the amount of service provided by itself.

Third, the bidding agency is a social intermediary organization. This is a definition of the nature of the tendering agency. Intermediary organizations are those organizations that do not engage in production and operation and commodity circulation activities themselves, but provide various services for market entities specializing in production and operation and commodity circulation activities, such as law firms, accounting firms, asset appraisal agencies, industry associations, consulting agencies, auction houses, etc. The development of the market economy is inseparable from the market intermediary organization. As the link between the government, the market and enterprises, intermediary organizations have an irreplaceable role in government administration. Developed market intermediary organizations are also an important manifestation of market maturity and developed market economy. Intermediary organizations mainly have four major roles: providing services for market entities, communicating the links between market entities, notarizing to ensure fair competition and fair transactions in the market, and supervising market transactions. Bidding agencies are professional institutions that provide bidding services for market entities independent of the government and enterprises, and belong to social intermediary organizations. In the process of organizing bidding, the bidding agency must not only accept the supervision of bidders and bidders, but also accept the supervision of the government and society, as well as the qualification assessment and professional ethics constraints. At the same time, the bidding agency is also a bridge between the bidder and the bidder, and is the link between the government to manage the bidding behavior of the bidder. Therefore, the tendering agency is a social intermediary organization in the typical sense.

The above provisions can be said to be the definition given by the bidding agency, and it can also be said to be the general conditions of the bidding agency. In addition, the tendering agency must also meet some specific conditions, namely the place of business and the corresponding funds specified in paragraph 2 of this article; the professional ability to prepare the tender documents and organize the evaluation of the bid; and the expert pool.

First, have a place of business and corresponding funds. This is the material condition necessary for conducting business, and it is also an external condition for the establishment of a tendering agency. A place of business is a fixed place where agency services are provided. The corresponding funds are the funds necessary to carry out the agency business. For bidding agencies with enterprise legal person qualifications, the Company Law stipulates that the registered capital of science and technology development, consulting and service limited liability companies shall not be less than 100,000 yuan; the Implementation Rules for the Administration of the Registration and Administration of Enterprise Legal Persons stipulate that the registered capital of consulting service companies shall not be less than 100,000 yuan.

Second, it has the professional strength to prepare bidding documents and organize bid evaluation. Derived from article 12, paragraph 2, this article is that the ability to prepare bidding documents and organize bid evaluation is not only a criterion for measuring whether the tenderer can handle the tendering matters on its own, but also a substantive element that the tendering agency must have. From the perspective of the entire bidding and bidding process, the preparation of bidding documents and the organization of bid evaluation are the two most important links. The bidding documents are the basic documents followed in the whole bidding process, the basis for bidding and evaluation, and an important part of the contract. In general, there is no or limited face-to-face communication between the bidder and the bidder, and the bidder can only prepare the bidding documents according to the requirements of the bidding documents. Therefore, the tender documents are a bridge between the bidders and the bidders. Whether or not a complete and rigorous bidding document can be prepared directly affects the quality of the bidding and is also the key to the success or failure of the bidding. Organize bid evaluation, that is, organize the bid evaluation committee, in strict accordance with the standards and methods determined in the bidding documents, evaluate and compare all bidding documents, and determine the successful bidder from it. Whether or not the bid evaluation can be successfully organized directly affects the effect of the bid and is also an important guarantee for the fairness of the bid. Therefore, the preparation of bidding documents and the organization of bid evaluation are the most basic business capabilities that bidding agencies should have.

Third, it has a pool of technical, economic and other experts who meet the conditions stipulated in Article 37, Paragraph 3, and can be selected as members of the bid evaluation committee. Article 37 of the Law on Tendering and Bidding stipulates the method for the composition of the bid evaluation committee and restricts the conditions for experts who can enter the bid evaluation committee (paragraph 3): they shall have been engaged in the relevant field for eight years and have a senior professional title or have the same professional level, and the bidder shall determine from the roster of experts provided by the relevant departments of the State Council or the relevant departments of the people's governments of provinces, autonomous regions or municipalities directly under the Central Government, or the list of experts in the expert pool of the bidding agency. It can be seen that the paragraph refers to three types of expert databases or rosters of experts: the roster of experts provided by the relevant departments of the State Council, the roster of experts provided by the relevant departments of the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government, and the expert pool of bidding agencies. Relevant to this article is the pool of experts of tendering agencies. In other words, the tendering agency must have its own pool of experts, and the selected experts must meet the conditions stipulated in Article 37 (have been engaged in the relevant field for eight years and have a senior title or have the same professional level), and can be selected as members of the bid evaluation committee.

Article 14 The qualifications of a bidding agency engaged in the business of bidding agency for engineering construction projects shall be determined by the competent administrative department for construction under the State Council or the people's government of a province, autonomous region or municipality directly under the Central Government. The specific measures shall be formulated by the competent administrative department for construction under the State Council in conjunction with the relevant departments of the State Council. The competent department for the qualification determination of bidding agencies engaged in other bidding agency business shall be prescribed by the State Council.

Bidding agencies shall not have a subordinate relationship or other interest relationship with administrative organs and other state organs.

【Interpretation】This article stipulates the relationship between the qualification determination of the bidding agency and the administrative organ.

Qualification is the condition for engaging in a certain activity. Since the compulsory bidding projects provided for in Article 3 of this Law are related to the national economy and people's livelihood, the bidding agencies providing services for these projects must have considerable professional quality and professional level, and cannot be uneven and mixed. Therefore, in addition to stipulating in article 13 some of the conditions that must be met by the tendering agency, this article also puts forward requirements for the qualifications of the tendering agency and gives the administrative department the authority to determine the qualifications. Through the double restriction of the conditions for the establishment of bidding agencies and the qualifications of practitioners, one is that the number can be controlled to prevent the agency from rushing up and over-inflating, resulting in vicious competition, disrupting the market and other adverse consequences, and second, it can standardize the agency behavior, improve the business level, and provide more high-quality and efficient services for the bidding and bidding business.

At present, China's bidding agency business is mainly concentrated in the fields of engineering construction, import of mechanical and electrical equipment, the use of international financial organizations and foreign government loan projects. In recent years, there have also been some bidding agencies in the fields of government procurement bidding and scientific research project bidding. The different nature of the bidding project determines the different business scope of the bidding agency and the different qualification departments. In view of this reality, this article stipulates: (1) The qualifications of the bidding agency for engineering construction projects shall be determined by the State Council or the competent construction administrative department of the people's government of the province, autonomous region or municipality directly under the Central Government. As for the specific methods for qualification determination, such as the criteria and conditions for the identification, the procedures for the identification, the scope of employment, the assessment and rewards and punishments, as well as the division of labor between the competent administrative department of construction under the State Council and the competent local administrative department of construction, and between the competent administrative department of construction under the State Council and other departments of the State Council, the competent administrative department of construction under the State Council shall formulate it in conjunction with the relevant departments of the State Council. (2) The competent department for the qualification determination of the bidding agency engaged in other bidding agency business shall be prescribed by the State Council. "Other bidding agency business" here refers to other agency business other than the bidding agency business of engineering construction projects, such as bidding for equipment and materials. The qualifications of other agencies are determined by which department, that is, the terms of reference of which department they belong to, which involves the division of responsibilities of various departments of the State Council. According to the relevant provisions of the Organic Law of the State Council, this can only be decided by the State Council. Therefore, this article stipulates that "the competent authority for the determination of its qualifications shall be prescribed by the State Council".

As a social intermediary organization, the bidding agency shall be independent of the government and the parties, perform its duties objectively and impartially, and provide various services. In real life, due to some historical reasons, some bidding agencies are directly subordinate to an administrative organ, and while competing with other bidding agencies, they also exercise the functions of industry managers and determine the code of conduct for other agencies. This situation of not distinguishing between government and enterprise (affairs) fundamentally violates the basic principle of "establishing an administrative management system with high efficiency, coordinated operation, and standardized behavior" under the conditions of market economy. In addition, due to the inextricable relationship between these agencies and the competent administrative organs, they are in an absolutely dominant position in the competition, resulting in unfair treatment of other agencies. For this purpose, this article stipulates that the tendering agency shall not be subordinate to or have an interest in any administrative or state organ. "Subordination" means being subject to jurisdiction or subordination; subordinate to administrative organs or state organs, that is, subject to the jurisdiction of administrative organs or state organs, and the main responsible persons are appointed by administrative organs to issue documents in the name of administrative organs. "Interest relationship", that is, although not directly subordinate to the administrative organ, but has an economic connection with the administrative organ, under the influence of the administrative organ, such as attached to the name of the administrative organ, become a "contact unit"; pay management fees to the administrative organ according to the amount of business, accept its management; according to the documents issued by the administrative organ, the implementation of monopoly bidding agency for projects approved by the administrative organ, and so on. In this sense, no government department and its subordinate agencies, as well as administrative and public institutions, shall become bidding agencies.

Article 15 The bidding agency shall handle the bidding matters within the scope entrusted by the bidder and abide by the provisions of this Law on the bidder.

【Interpretation】This article legally stipulates the scope of agency authority of the bidding agency.

Agency became an independent legal system, the result of the development of the commodity economy. The emergence of the agency system can enable civil subjects not only to use their own ability and knowledge to participate in civil activities, but also to use the ability and knowledge of others to carry out civil activities, so that the ability of civil subjects to engage in civil activities has been greatly enhanced. The agency system helps to break the restrictions of time and space, reduce transaction costs, and provide convenience for civil entities to enhance their competitiveness, better realize their rights, and participate in social and economic activities. The act of agency has the following characteristics: First, the agent expresses his or her own skills independently for the benefit of the principal. In other words, the agent's mission is to act on behalf of others for legal actions, such as entering into contracts, performing debts, claiming damages, etc. Second, the agent must carry out the legal act in the name of the principal, the so-called "direct agent". Third, the legal effect of the act of agency is directly attributable to the principal. The application of agency is limited to acts that do not have a personal nature, and civil juristic acts that should be carried out by the person in accordance with the provisions of the law or agreed by both parties shall not be represented.

From the different bases for the generation of agency rights, China's "General Principles of Civil Law" stipulates three types of agencies: entrusted agents based on the entrusted authorization of the principal, statutory agents based on the direct provisions of the law, and designated agents based on the designated acts of the court or relevant organs. As one of the most common and widely applicable forms of agency, entrusted agency is the premise for the trustee to sign a entrustment contract with the principal and the principal to make the entrustment authorization behavior. The most fundamental point is that the agent must carry out the act of agency within the scope of the entrusted authority (the scope of the authority of the agent), and only the civil activities carried out within this scope can be regarded as the acts of the principal, and the principal bears civil liability for the legal consequences of the act of the agent. Judging from the provisions of the Law on Tendering and Bidding and the General Principles of the Civil Law, bidding agencies are social intermediary organizations established in accordance with law, engaged in bidding agency business and providing related services. Its main responsibility is to accept the entrustment of the bidder and handle the relevant bidding matters on behalf of the bidder, such as preparing the bidding documents, organizing the evaluation of the bid, and coordinating the signing and performance of the contract. Therefore, in a legal sense, the bidding agent belongs to a kind of entrusted agency and should comply with the relevant provisions of the law. Based on this consideration, this article stipulates: "The bidding agency shall handle the bidding matters within the scope entrusted by the bidder. ”

The bidding agency shall, within the scope of the authority entrusted by the bidder, handle the bidding matters in the name of the bidder, and obtain the rights and set the obligations for the bidder. Therefore, in the bidding activities, although the bidder is in contact with the bidding agency, it represents the interests of the bidder, and the consequences of the behavior are borne by the bidder.

Article 16 Where a bidder adopts the method of open bidding, it shall issue a bidding announcement. The announcement of bidding for projects that must be tendered in accordance with law shall be published through newspapers and periodicals designated by the State, information networks or other media.

The tendering announcement shall indicate the name and address of the tenderer, the nature, quantity, place and time of implementation of the tendering project, and the method of obtaining the tendering documents.

【Interpretation】This article stipulates the method of publication of the bidding announcement and its content requirements.

First, public bidding shall issue a bidding announcement. Article 10 of the Law on Tendering and Bidding stipulates that public bidding is when a tenderer invites an unspecified legal person or other organization to bid by means of a tender announcement. The publication of the tender announcement is one of the most significant features of public tendering, and it is also the first link of public tendering. The medium on which the tender announcement is published directly determines the scope of dissemination of the tender information, which in turn affects the degree of competition and the effect of the tender. In any case, however, where public bidding is used, an announcement must be issued, which is a common practice in all countries in the world.

Second, the announcement of bidding for projects that must be tendered according to law shall be published in newspapers and periodicals, information networks or other media designated by the State. To correctly understand this provision, the following points should be clarified: (1) The tender announcement should be published in newspapers, periodicals, information networks or other media. Publishing bidding announcements through newspapers and periodicals is a traditional way of publishing information, which is widely used at home and abroad. In China, the Economic Daily, People's Daily (Overseas Edition), China Daily, etc. are all newspapers and periodicals with more tabs. In Singapore, Lianhe Zaobao is the legal newspaper that publishes announcements on government tenders for projects. The United Nations Development Forum and the Official Journal of the European Union are the venues for publishing bidding information for World Bank and ADB loan projects and procurement project bidding information for EU countries. With the development of modern information technology, countries around the world have begun to use the Internet service station to issue bidding announcements, so that information dissemination is faster, more accurate, convenient and low-cost, and the quality and efficiency of bidding and procurement work are further improved. For example, the "Tenders Electronic Daily" of the European Union, the "Acquisition Reform Network" of the United States, and the "Public Works Global Information Network" in Taiwan. In recent years, similar bidding information networks have also appeared in China, such as the "China Procurement and Bidding Information Network" (www.chinabidding.gov.cn). With the development of science and technology, some new channels of distribution will also emerge, and for this reason, this article provides for "other media" as a supplement to newspapers and information networks. (2) The above-mentioned newspapers, periodicals, information networks or other media must be designated by the State. The meaning of this sentence is that, except for newspapers and periodicals designated by the state, information networks or other media, bidders for projects that must be tendered according to law shall not publish bidding announcements in other places. The purpose of such a requirement is to centralize the channels for the release of bidding information so that bidders can obtain information more quickly and conveniently. "State designation" means that, in accordance with the provisions of Article 7 of this Law, a certain department designated by the State Council may designate several types of newspapers and periodicals and networks to publish bidding announcements. In order to meet the purpose of public bidding, the newspapers and periodicals and networks that issue bidding announcements must have a large circulation nationwide, a wide coverage, and a far-reaching scope of influence. In order to introduce a competition mechanism and facilitate the transmission and communication of information, it is generally not only a newspaper or network that should be designated, but should be determined according to the nature of China's tendering projects, as well as the available newspapers and networks. (3) This requirement is only for projects that must be tendered according to law, that is, mandatory tendering projects. Where other projects are publicly tendered, a tender announcement must also be issued, but the tenderer may freely choose the channel of release.

Third, the content that should be specified in the bidding announcement. The main purpose of the tender announcement is to publish the tender information so that interested bidders are aware of them, who come to purchase the tender documents, prepare the tender documents and participate in the tender. Therefore, what should be included in the tender announcement, or at least what should be included, is of par with potential bidders. Generally speaking, in the tender announcement, the main content should be a description of the tenderer and the tendered project, so that the potential bidding enterprise, on the basis of mastering this information, according to its own situation, make a decision on whether to purchase the tender documents and bid. Paragraph 2 of this article also embodies this requirement, stipulating that the tender announcement shall have the following contents: (1) the name and address of the tenderer. This is a brief description of the tenderer's situation. (2) The nature, quantity, place and time of implementation of the bidding projects. The nature of the bidding project refers to the project that belongs to the infrastructure, public utility project, or the project invested by state-owned funds, or the project that uses loans and aid funds from international organizations or foreign governments; it is a bidding for civil engineering projects, or a bidding for equipment procurement, or a bidding for services such as survey and design, scientific research topics, etc. The number of bidding projects refers to the specific quantification of bidding projects, such as the supply of equipment, the quantity of civil works, etc. The implementation site of the bidding project refers to the supply site of materials and equipment, the construction site of civil engineering works, the location of providing service projects, etc. The implementation time of the bidding project refers to the delivery time of the equipment, materials and other goods, the construction period of the project, and the time of providing the service project. (3) Methods for obtaining solicitation documents. Refers to the place where the tender documents are sold, the person in charge, the charging standards, the mail order address and fee of the tender documents, the bank and account number of the tenderer or the tendering agency, etc.

Article 17 Where a tenderer adopts the method of invitation to bid, it shall issue an invitation to bid to three or more specific legal persons or other organizations that have the ability to undertake the bidding project and have good credit standing.

The invitation to tender shall clearly state the matters provided for in paragraph 2 of Article 16 of this Law.

【Interpretation】The provisions of this article are the basic requirements of the method of inviting bidding and the content of the invitation to tender.

Invitation to tender is a tendering method in which the tenderer invites a specific legal person or other organization to participate in the tender by means of a tender invitation to tender. This method of tendering differs from open tendering in that it allows tenderers to issue invitations to tender to a limited number of specific legal persons or other organizations without having to publish a tender announcement. Therefore, inviting bids can save bidding costs and improve efficiency. According to the usual practice at home and abroad, the prerequisite for the use of invitation to tender is a better understanding of the market supply situation and the situation of suppliers or contractors. On this basis, it is also necessary to consider the specific circumstances of the bidding project: first, the technology of the bidding project is new and complex or highly specialized, and it can only be selected from a limited range of suppliers or contractors; second, the value of the bidding project itself is low, and the bidder can only achieve the purpose of saving and improving efficiency by limiting the number of bidders. Therefore, invitation to tender is permissible and has greater applicability in practice.

However, in the invitation to tender, the tenderer may deliberately invite some legal persons or other organizations that do not meet the conditions as foils for the successful bidders in its internal designation, and engage in false bidding. In order to prevent the occurrence of this phenomenon, the conditions for the object of the invitation to tender should be limited, that is, no less than 3 legal persons or other organizations shall issue invitations to tender to them; The former is a minimum requirement for the scope of the invitation to bid in order to ensure an appropriate degree of competitiveness, while the latter is a requirement for the qualifications and capacity of the bidder, which the tenderer may also conduct a qualification review to determine whether the bidder meets the requirements in this regard (see article 18 of this Law for details). In order to ensure an appropriate degree of competitiveness in the invitation to tender, the tenderer shall invite as many legal persons or other organizations as possible to issue invitations to tender in order to ensure effective competition, in order to ensure effective competition.

An invitation to tender, like a tender announcement, is a preliminary basic document issued to a legal person or other organization acting as a supplier or contractor in relation to the tender. In order to increase efficiency and transparency, invitations to tender must contain the necessary tendering information to enable suppliers or contractors to determine whether the conditions to be tendered are acceptable to them and to understand how to participate in the tendering process. The name and address of the tenderer, the nature, quantity, place and time of implementation of the tendering documents and the means of obtaining the solicitation documents, as provided for in article 16, paragraph 2, of this Law are only minimum provisions and therefore do not preclude the tenderer from adding such other information as it deems appropriate, such as any fees charged by the tenderer for the solicitation documents, the currency and manner in which the fees for the solicitation documents are paid, the language in which the solicitation documents are used, the time at which the goods are intended or requested to be supplied or the timetable for the completion of the works or the timetable for the provision of services, etc.

Article 18 The tenderer may, in accordance with the requirements of the bidding project itself, require the potential bidder to provide relevant qualification certification documents and performance in the bidding announcement or the invitation to bid, and to conduct a qualification review of the potential bidder;

Tenderers shall not restrict or exclude potential bidders under unreasonable conditions, and shall not discriminate against potential bidders.

【Interpretation】The provisions of this article are the qualification examination of potential bidders and the basic requirements for qualification review.

The so-called potential bidder refers to suppliers or contractors who are aware of the relevant conditions and requirements of the bidding project announced by the bidder and may be willing to participate in the bidding competition. The examination of the qualifications of potential bidders is both a right of the tenderer and a procedure that is often followed in most tendering activities. This procedure is of great significance to protect the interests of bidders and promote the smooth progress of bidding and bidding activities.

The purpose of the eligibility process is to exclude potential bidders or bidders whose qualifications are not suitable for undertaking or performing a contract during the tendering process. Such procedures are particularly useful for complex or high-value tendering projects, and even for tendered projects of lower value but technically complex or highly specialized tenders. To bypass this procedure and to review and compare the bidders' bidding documents directly would not only be much more costly but also more time-consuming. The use of the qualification review process reduces the number of tenderers to evaluate and compare tender documents. In addition, some suppliers or contractors with better credit and higher ability are often unwilling to compete with unqualified or bad-reputation suppliers or contractors so as not to lose their "face". Therefore, the qualification review process may be an important condition for these potential bidders with better credit standing and higher ability to decide whether to participate in the bidding.

In general, qualification review can be divided into pre-qualification and post-qualification. Prequalification is the qualification review of potential bidders prior to bidding and the qualification of bidders after bidding (usually after the opening of tenders). Whether pre-qualified or post-qualified, it is primarily a review of whether a potential bidder or bidder satisfies the following conditions: (1) has the right to conclude a contract independently; (2) has the ability to satisfactorily perform the contract, including professional, technical qualifications and capabilities, the status of funds, equipment and other material facilities, management capacity, experience, credibility and corresponding staff; (3) the performance of previous undertakings of similar projects; (4) not being ordered to cease business, property being taken over, frozen and insolvent ;(5) There have been no offences or serious offences related to the fraudulent acquisition of contracts in recent years (e.g. within the last three years). In addition, if the State provides otherwise for the qualifications of bidders, the tenderers must comply with their provisions and must not conflict with or fall below the requirements of those provisions. For example, in the construction bidding of major national construction projects, the state requires the first-level construction enterprises to contract, and the bidders cannot let the construction enterprises of the second level and below participate in the bidding. Without prejudice to trade secrets, potential bidders or bidders shall submit to the tenderer statutory supporting documents or other information evidencing the above-mentioned relevant qualifications and performance.

Whether or not to conduct a qualification review and the requirements and criteria for qualification review shall be specified by the tenderer in the tender announcement or in the invitation to tender. These requirements and criteria shall apply equally to all potential bidders or bidders. Tenderers shall not prescribe any criteria, requirements or procedures that are not objectively reasonable, restrict or exclude potential bidders, such as deliberately raising technical qualification requirements so that only a particular potential bidder can meet the requirements. Tenderers may also not prescribe standards, requirements or procedures that discriminate against a particular bidder or certain bidders. Because the former will restrict or exclude bidders, the latter will treat bidders unfairly and ultimately limit competition.

The tenderer shall make a decision on the qualifications of potential bidders or bidders who submit documents and information for qualification examination in accordance with the requirements and criteria set forth in the tender announcement or tender invitation. The tenderer shall inform the potential bidder or the bidder whether the examination is qualified.

At present, in the practice of bidding, bidders often adopt the pre-qualification procedure and specially publish pre-qualification announcements. Prequalification announcements should generally include the following:

(1) the name and address of the tenderer;

(2) The nature and quantity of the tendered items;

(3) The location and time requirements of the bidding project;

(4) The method, place and time of obtaining prequalification documents;

(5) Fees charged for prequalification documents;

(6) The place and deadline for submitting the application for prequalification;

(7) Schedule of prequalification.

Article 19 The bidder shall prepare the bidding documents according to the characteristics and needs of the bidding project. The bidding documents shall include all substantive requirements and conditions such as the technical requirements of the bidding project, the criteria for the qualification examination of the bidders, the bidding quotation requirements and the evaluation criteria, as well as the main terms of the contract to be signed.

Where the State has provisions on the technology and standards of the bidding project, the bidder shall submit corresponding requirements in the bidding documents in accordance with its provisions.

Where the bidding project needs to divide the bidding section and determine the construction period, the bidder shall reasonably divide the bidding section and determine the construction period, and indicate it in the bidding documents.

【Interpretation】The provisions of this article are the preparation of bidding documents and their relevant contents and requirements.

Solicitation documents are written documents issued by the tenderer to suppliers or contractors to provide them with the information required for the preparation of tender documents and to inform them of the rules and procedures on which tendering and tendering will be based. The tender documents are one of the most important documents in the tendering process. Under normal circumstances, before issuing a tender announcement or issuing an invitation to tender, the tenderer or the tendering agency entrusted by it shall prepare the tender documents according to the characteristics and requirements of the tendering project.

The content of the solicitation documents can be broadly divided into three categories: the provisions on the preparation and submission of tender documents, which are included in order to minimize the possibility that qualified suppliers or contractors will be disadvantaged or their bids rejected because they do not know how to prepare the tender documents; The first category is the main clauses on the contract, of which the main commercial clauses are conducive to the bidders to understand the main contents of the contract signed after winning the bid, and to clarify the respective rights and obligations of both parties. Among them, technical requirements, bidding and quotation requirements and main contract terms are the key contents of the bidding documents, collectively referred to as substantive requirements.

Solicitation documents should generally include at least the following:

(1) Notice to bidders. This is the solicitation document reflecting the tenderer's intention to tender, and each clause is a description of the rules that the bidder should be aware of and abide by.

(2) The nature and quantity of the bidding projects.

(3) Technical specifications. The technical specifications or technical requirements of the bidding project are one of the most important contents in the bidding documents, which refers to the technical and quality standards of the bidding project, such as a certain size, weight, volume, precision, performance, etc. The determination of technical specifications or technical requirements is often a technical constraint on whether the tender can be competitive and achieve the intended purpose. Therefore, all countries in the world and relevant international organizations generally require that the technical specifications specified in the solicitation documents should adopt internationally or domestically recognized and statutory standards. Paragraph 2 of this article stipulates that "if the State has provisions on the technology and standards of the bidding project, the bidder shall put forward corresponding requirements in the bidding documents in accordance with its provisions". The above is that the state has statutory recognized standards for the technical specifications of the bidding project, and the bidders should follow and adopt the technical specifications stipulated in the bidding documents, and must not engage in another set.

(4) The requirements of the bidding price and the method of calculation thereof. Bidding quotation is an important factor measured by tenderers when evaluating bids. Therefore, the tenderer should put forward the specific requirements and calculation methods of the quotation in advance in the solicitation documents. For example, when tendering for goods, foreign goods should generally be quoted as the shore price (CIF) or freight insurance paid to the destination price (CIP), domestic spot or manufactured or assembled goods, including previously imported goods quoted at exworks (factory price or shelf delivery price). If the bidder is required to undertake inland transportation, installation, commissioning or other similar services, such as supply and installation contracts, the bidder shall also be required to make an additional quotation for these services. In the case of a tender for a project, the bidder shall generally be required to quote the unit price and the package price for the completion of the work, which shall include all duties and taxes. The solicitation documents should state that the bid price is fixed or that the price is adjusted. The method of price adjustment and the scope of adjustment should be specified in the solicitation documents. One or more currencies of the tender price shall also be indicated in the solicitation documents.

(5) Criteria and methods for bid evaluation. The evaluation of bids may only be made using the criteria and methods set out in the solicitation documents and may not be determined separately.

(6) The time of delivery, completion or service provision.

(7) The relevant qualification and credit certificates that the bidder shall provide.

(8) The amount of the bid bond or other form of guarantee. In tendering and bidding proceedings, if the bidder withdraws the bid without authorization after bidding, or if the contract cannot be concluded due to the fault of the bidder after the bid is accepted, the tenderer may suffer losses (such as the cost of re-bidding and the loss caused by the delay in bidding, etc.). Therefore, the tenderer may require the bidder to provide a bid bond or other form of guarantee (such as mortgage, guarantee, etc.) in the solicitation documents to prevent the bidder from defaulting and to be compensated in the event of the bidder's default. The bid deposit can be cash, cheque, letter of credit, bank draft, or a bank guarantee. The amount of the bid deposit should not be too high, and in actual operation, it generally does not exceed 2% of the total bid price, so as not to affect the enthusiasm of the bidder. After the successful bidder is determined, the bidder shall promptly return his bid deposit to them.

(9) Requirements for the preparation of bidding documents.

(10) The manner, place and deadline for providing bidding documents.

(11) The schedule of bid opening, bid evaluation and bid determination.

(12) Main contract terms. The terms of the contract shall clearly stipulate the scope of the work to be completed, the scope of supply, and the respective rights and obligations of the tenderer and the successful bidder. In addition to the general contractual clauses, the contract should include special contractual clauses for the tendered project.

The provisions of paragraph 3 of this article mainly refer to engineering construction projects, and the bidders shall not divide the bidding sections that are part of the bidding projects too small. The division of bids is too small, on the one hand, it is not conducive to the bidding of contractors with large operating scale, strong technical strength and rich experience, on the other hand, it will make the bidding fail to achieve the purpose of "value for money". At the same time, in order to ensure the quality of the project, it is necessary to maintain a reasonable construction period, the construction period is too short, it is easy to cut corners and shoddy, and the conditions that the infrastructure should have are not guaranteed. Therefore, when it is necessary to divide the bidding section and determine the construction period, the bidder shall reasonably divide the bidding section, determine the construction period, and indicate it in the bidding documents.

Article 20 The solicitation documents shall not require or indicate specific production suppliers and other contents that contain a tendency or exclusion of potential bidders.

【Interpretation】The provisions of this article are prohibitive provisions on the content of the solicitation documents to prevent the improper conduct of the bidders.

Article 19 of this Law stipulates the elements that must be included in the solicitation documents, which will enable suppliers or contractors to submit bids that meet the needs of the tenderer and enable the tenderer to be compared in an objective and fair manner, thus reflecting the openness, fairness and impartiality of the tendering procedure. This requires that the content specified in the solicitation documents, in particular the technical specifications therein, must meet the requirements of fair competition, and that the technical specifications or other contents specified in the solicitation documents must not require or indicate a particular patent, trademark or trade name, design or model, specific origin or manufacturer, and must not have content that favors or excludes a potential bidder. However, this does not apply if it is not possible to accurately or clearly describe the characteristics and requirements of the project to be tendered, and the words such as "equivalent" or "or equivalent" are indicated in the solicitation documents. The so-called patent is the legally protected right that a specific citizen or legal person enjoys solely by creating an invention for a certain period of time, including inventions, utility models and designs. The so-called trademark is a mark that distinguishes the goods of a producer or operator of a commodity from the goods of other producers or operators. China's law stipulates that a trademark registered with the approval of the Trademark Office is a registered trademark, and the trademark registrant enjoys the exclusive right to the trademark and is protected by law. The so-called business name refers to the name of an enterprise or other economic organization. The so-called model refers to the performance, specifications and size of machinery or other industrial products. The so-called place of origin refers to a certain country name (such as "French white wine") or a certain regional name of a country (such as "Jingdezhen porcelain") that indicates "where" or "where" a commodity "originated" or "derived from", and that the product is closely related to the geographical name (regardless of size) in terms of quality, function or other characteristics. It can be seen that the mention of the above-mentioned specific patents, trademarks and other exclusive rights or specific designs, models, origins or manufacturers actually clearly indicates that only this particular manufacturer or product meets the wishes of the bidder, and other manufacturers or products are not among them, which obviously restricts and excludes other potential bidders. The so-called "content that favors a potential bidder or excludes a potential bidder" means that although no specific manufacturer or product is specified, the content specified in the solicitation documents, especially the technical specifications, implies that it favors or excludes a specific potential bidder. This is also a practice that restricts and excludes other manufacturers or products for specific manufacturers or products, and should therefore be prohibited.

Article 21 The tenderer may, on the basis of the specific conditions of the tendered project, organize potential bidders to investigate the project site.

【Interpretation】The provisions of this article are the investigation of the project site.

On-site survey refers to the on-site investigation conducted by the bidder on the economic, geographical, geological, climatic and other objective conditions and environment of the project implementation site organized by the bidder.

After the bidder issues the bidding notice or the invitation to bid, he may notify and organize potential bidders to conduct on-site investigation at the project site according to the actual needs of the bidding project. Such tender projects are usually mostly engineering projects.

Potential bidders may go to the site to investigate whether to decide on a bid or the need to prepare bidding documents, to further understand the intentions of the bidder and the surrounding environment of the site, so as to obtain useful information and make decisions on whether to bid or bid strategies and bid price accordingly.

If the bidder has any doubts in the on-site investigation, he shall submit them in writing to the bidders before the preparatory meeting for bidding, but shall leave time for the bidders to answer.

The tenderer shall take the initiative to introduce all the relevant situations of the site to the potential bidders, and the potential bidders shall conduct a comprehensive investigation of the site conditions affecting the supply or contracted project, including economic, geographical, geological, climatic, legal environment, etc., and generally should understand at least the following contents of the engineering construction project:

1. Whether the construction site meets the conditions specified in the bidding documents;

2. The geographical location and terrain and landform of the construction;

3. The address, soil quality, groundwater level, hydrology and other conditions of the construction site;

4. Climatic conditions at the construction site, such as temperature, humidity, wind, etc.;

5. The environment of the site, such as transportation, water supply, power supply, sewage discharge, etc.;

6. Temporary land, temporary facilities, etc., that is, temporary use of sheds during the construction of the project, warehouses where materials are stacked, etc., and the places occupied by these facilities.

However, not all bidding projects, the bidders need to organize potential bidders to conduct on-site investigation, for the procurement object is more clear such as the tender for goods, there is often no need to conduct on-site investigation.

Article 22 The tenderer shall not disclose to others the name and number of potential bidders who have obtained the tender documents, as well as other circumstances related to tendering and bidding that may affect fair competition.

If the bidder has a bid base, the bid base must be kept confidential.

【Interpretation】The provisions of this article are the confidentiality obligations of the tenderer.

Tenderers must not disclose potential bidders. In order to effectively ensure the competitiveness of bidding, this article stipulates that bidders shall not disclose to others the names of bidders and the number of bidders who have obtained the bidding documents, nor shall they disclose other circumstances that may affect unfair competition, mainly to prevent bidders from colluding with each other, such as raising bidding bids, or forming a common alliance, deliberately letting a bidder win the bid by means of raising or reducing the bid, and then taking turns to sit on the throne, or extracting benefits from them and harming the interests of the bidders.

If the bidder has a bid base, the bid base must be kept confidential. The bid base is a unique concept in China's project bidding, which is the project cost calculated according to the national unified project quantity calculation rules, budget quotas and valuation methods, and is the expectation of the bidders for the construction project budget. In foreign countries, the bid base is generally referred to as "estimated cost" (such as the World Bank, ADB, etc.) and "contract valuation" (such as the WTO Government Procurement Agreement); China and Taiwan refer to it as the "reserve price". The preparation of the bid base should generally pay attention to the following points: (1) according to the design drawings and relevant information, bidding documents, with reference to the technical and economic standard quotas and specifications stipulated by the state, determine the project quantity and set the bid base; (2) the bid base price should be composed of costs, profits and taxes, and should generally be controlled within the total estimated budget of the approved construction project and the limit of the investment package; (3) the bid reserve price, as the expected price of the bidder, should strive to coincide with the actual changes in the market, and should be conducive to competition and ensure the quality of the project ;(4) The price of the base should take into account the price changes such as labor, materials, and mechanical shifts, and should also include unforeseeable construction fees, dry contract fees, and measure fees. Where the project requirements are excellent, the corresponding costs should also be increased; (5) only one bid base can be prepared for a project.

The practice of setting up a bidding base is a measure taken in view of the current development of China's construction market and national conditions, and is a concrete embodiment of the bidding system with Chinese characteristics. The bid base is confidential until the bid is opened, and no one may disclose the bid base.

Article 23 Where the tenderer makes necessary clarifications or amendments to the tender documents that have been issued, it shall notify all the recipients of the tender documents in writing at least fifteen days before the deadline for submission of the tender documents. The clarification or modification shall form an integral part of the solicitation documents.

【Interpretation】The provisions of this article are the clarification and modification of the solicitation documents.

Clarification refers to the tenderer's explanation of omissions in the solicitation documents, unclear word meanings or more complex matters, and answering various questions raised by the bidders. Modification means that the tenderer revises the errors that appear in the solicitation documents.

Within the statutory time, the tenderer has the right to clarify or amend the tender documents that have been issued. In order to achieve the objectives of the procurement, it is necessary for the tenderer to have the right to amend and clarify the solicitation documents. In the process of preparing the bidding documents, due to the restrictions of the information, time, experience and professional knowledge obtained, the bidding documents may be errors or omissions, and if the wrong bidding documents are used for bidding, it will inevitably affect the effect of the bidding and even lead to the failure of the bidding. Therefore, the tenderer may, on its own initiative or at the request of contractors and suppliers, clarify or amend some provisions that are unclear or prone to misunderstanding, or even errors involving substantive content, within the time provided for in this Law.

This article regulates the timing and form of notification for clarification or modification of solicitation documents. In order to allow the bidders sufficient time to respond to all the solicitation documents and to prepare the quality tender documents, the clause requires the tenderer to notify all persons who purchase the solicitation documents in writing before the deadline for tender documents. This means that the recipient of the solicitation documents has obtained a written notice of clarification or amendment at least fifteen days before the deadline for the tender documents, and the notice is invalid for less than fifteen days. These clarifications or modifications are an integral part of the solicitation documents.

Article 24 The tenderer shall determine the reasonable time required by the bidder to prepare the bidding documents; however, the minimum period for projects for which bidding must be conducted in accordance with the law shall be no less than 20 days from the date of issuance of the bidding documents to the date on which the bidding documents are submitted.

【Interpretation】This article stipulates the preparation time of the bidding documents.

The tenderer shall determine the reasonable time required for the tenderer to prepare the tender documents. An important factor in promoting participation in the competition is to give suppliers and contractors sufficient time to prepare their tender documents. The length of this time varies from project to project and depends on various factors, such as the complexity of the goods, works or services to be procured, the expected degree of subcontracting, and the time required to submit tenders. It is therefore up to the tenderer to determine the deadline for the submission of tenders, depending on the circumstances of the procurement concerned.

For projects for which tendering is required by law, the minimum period from the date of issuance of the tender documents to the date on which the tender documents are submitted shall not be less than 20 days. For projects that are compulsorily tendered according to law, the validity period of bidding is at least 20 days, that is, not less than 20 days from the date of sale of the tender to the deadline for the submission of the bidding documents by the bidder.

Chapter III: Bidding

There are nine articles in this chapter, which mainly regulate the behavior of bidders. Bidders are one of the main bodies of the legal relationship between bidding and bidding, and whether their behavior is standardized or not is related to whether the bidding competition is reasonable and the effect of bidding. This chapter stipulates the basic conditions and requirements for participating in bidding, as well as the principles and requirements that bidders should follow in the preparation of bidding documents, stipulates the procedures for bidders to submit bidding documents, modify bidding documents, and withdraw bidding documents, and stipulates the conditions for joint bidding.

Article 25 A bidder is a legal person or other organization that responds to bidding or participates in bidding competition.

Where individuals are allowed to participate in bidding for scientific research projects that are tendered in accordance with law, the provisions of this Law on bidders shall apply to the individual bidders.

【Interpretation】The provisions of this article are the definition of bidders.

After the tender announcement or invitation to tender has been issued, all persons who are interested in the tender announcement or invitation to tender and who are likely to participate in the tender are referred to as potential bidders. Those potential bidders who respond to the tender and purchase the tender documents, participating in the tender, are called bidders. These bidders must be legal persons or other organizations.

The so-called response to bidding refers to the purchase of bidding documents, the acceptance of qualification review, and the preparation of bidding documents after potential bidders have obtained bidding information or invitations to bid, and participate in bidding activities in accordance with the requirements of bidders.

Participation in bidding competition refers to the activity of submitting bidding documents in accordance with the requirements of the solicitation documents and within a specified time. Bidders can be legal persons or other unincorporated organizations.

In accordance with the provisions of this Law, bidders must be legal persons or other organizations, excluding natural persons. However, taking into account the particularity of scientific research projects, this article adds provisions on individual bidding for scientific research projects, and individuals can participate in scientific research project bidding activities as bidding subjects. This is a special provision for the bidding of scientific research projects.

As an important means of procurement and competition under the conditions of market economy, the bidding system is increasingly used by people in the research and development of science and technology and the promotion of achievements. For a long time, China's scientific and technological work has mainly relied on planning and administrative means to manage and adjust. From the determination of scientific research topics, to research and development, experimental production and even popularization and application, it is arranged by the national directive plan. The funds used by the state for the development of scientific and technological undertakings, especially scientific research projects, mainly come from financial appropriations, and the direction and allocation of funds are determined through directive plans. The determination of scientific research projects and their funds is often in a top-down or bottom-up closed manner, which has played a major role in the planned economic system, but it no longer meets the requirements of the current market economic system. Scientific research units lack of sense of competition and risk awareness, the higher administrative departments encourage more joint than encourage competition, not merit-based support, so not only in the decision-making has a certain degree of blindness, but also in the specific implementation process, there are project duplication, departmental division, investment dispersion, information blockage, human care and other drawbacks, making it difficult for limited scientific and technological resources to play the best role. The Decision of the CPC Central Committee and the State Council on Accelerating Scientific and Technological Progress of May 6, 1995 also stipulates: "A competition mechanism should be introduced in the operation and management of scientific and technological work. The scientific research tasks of the state, industries and localities shall be openly competitive, and the undertaking units shall be selected through open bidding." The "Decision of the State Council on Deepening the Reform of the Scientific and Technological System during the Ninth Five-Year Plan Period" of September 15, 1996 stipulates: "It is necessary to select a number of major major projects that have a major leading role in the development of the national economy, have a certain foundation and advantages, and can enhance China's comprehensive national strength, adopt the method of competitive bidding, organize and promote scientific research institutions, institutions of higher learning, and enterprises, and concentrate their efforts on jointly tackling key problems." "Scientific and technological plan projects mainly implement the bidding system, open bidding to the public, and ensure the scientific nature of project establishment and the openness and fairness of bidding." In accordance with the provisions of Article 2 of this Law, this Law shall apply to all tendering and bidding activities within the territory of the People's Republic of China. Therefore, the bidding and bidding activities of scientific research projects must also comply with the provisions of this Law.

Article 26 Bidders shall have the ability to undertake bidding projects; where the relevant provisions of the State stipulate the qualifications of bidders or the bidding documents on the bidders, the bidders shall have the prescribed qualifications.

【Interpretation】The provisions of this article are the qualification conditions for bidders.

Bidders shall have the ability to undertake bidding projects. There must be certain conditions for participating in bidding activities, and not all interested legal persons or economic organizations can participate in bidding. Bidders should usually meet the following conditions: (1) human, material and financial resources appropriate to the requirements of the solicitation documents; (2) the qualification certificates required by the bidding documents and the corresponding work experience and performance certificates; (3) other conditions stipulated by laws and regulations.

Where the relevant provisions of the State or the bidding documents have provisions on the qualifications of bidders, the bidders shall have the prescribed qualifications. For some large-scale construction projects, suppliers or contractors are required to have certain qualification requirements, such as the Ministry of Water Resources and other professional management departments have a series of regulations on contracting major construction projects, and bidders participating in national key construction projects must reach Grade A qualifications. Bidders must have the appropriate qualification requirements when participating in such tenders.

Article 27 Bidders shall prepare bidding documents in accordance with the requirements of the bidding documents. The tender documents shall respond to the substantive requirements and conditions set forth in the solicitation documents.

Where the bidding project belongs to construction, the content of the bidding documents shall include the resumes, performances and mechanical equipment to be used to complete the bidding project, such as the resumes and performances of the project leaders and main technical personnel to be dispatched.

【Interpretation】The provisions of this article are the basis and content of the preparation of bidding documents.

The tender documents shall respond to the substantive requirements and conditions set forth in the solicitation documents. Bidders are required to purchase tender documents at the designated place and prepare tender documents. In the tender documents, it usually includes the tender instructions, the general terms of the contract, the special terms of the contract, the price clauses, the technical specifications and the annexes. When preparing the tender documents, the bidder must prepare the tender documents in accordance with these requirements of the tender documents.

Bidders shall carefully study and correctly understand the entire content of the solicitation documents and prepare the bidding documents as required. The bidding documents shall respond to the substantive requirements and conditions set forth in the solicitation documents, and "substantive requirements and conditions" refers to the price of the tendered project, the plan of the project, the technical specifications, the main terms of the contract, etc. in the bidding documents, and the bidding documents must respond to these terms. This requires that bidders must fill in strictly in accordance with the solicitation documents, must not modify the solicitation documents, must not omit or avoid the issues in the bidding documents, and cannot propose any strings attached. Tender documents can usually be divided into:

1. Business documents. Such documents are documents used to prove that the bidder has fulfilled the legal formalities and that the bidder understands the bidder's commercial creditworthiness and legality. Generally, it includes a bid guarantee, a letter of authorization and supporting documents from the bidder, a joint agreement provided by the consortium bidder, a credit certificate of the company represented by the bidder, etc. If there is a subcontractor, a credit document should also be issued for the bidder to review.

2. Technical documentation. In the case of a construction project, the entire construction organization design is included to evaluate the technical strength and experience of the bidder. Technically complex projects have detailed requirements for the content and format of the preparation of technical documents, and bidders should carefully fill in in accordance with regulations.

3. Price file. This is the core of the tender documents, all price documents must be prepared in full accordance with the format specified in the tender documents, no changes are allowed, and if they are omitted, they are considered to have been included in other price quotations.

In order to ensure that the bidder can complete the project undertaken after winning the bid, this article also requires that "if the bidding project belongs to construction, the content of the bidding documents shall include the resumes, performances and mechanical equipment to be used to complete the bidding project" of the project leader and the main technical personnel to be dispatched. Such provisions are conducive to the bidder to control the risks arising after the project is awarded, to ensure the quality of the project, and the project leader and main technical personnel play a key role in the construction of the project. Mechanical equipment is an important tool to complete the task, and the technical equipment of this tool directly affects the construction period and quality of the project. Therefore, in this article, bidders are required to indicate in the tender documents the machinery and equipment intended to be used to complete the tendered project.

Article 28 The bidder shall deliver the bidding documents to the bidding place before the deadline for submitting the bidding documents required. After the bidder receives the bidding documents, it shall sign for them and save them, and shall not open them. Where there are less than three bidders, the bidders shall re-bid in accordance with this Law.

Tender documents delivered after the deadline for submission of tender documents required by the tender documents shall be rejected by the tenderer.

【Interpretation】The provisions of this article refer to the delivery and signing of bidding documents.

Delivery of tender documents. Bidders must deliver the tender documents within the prescribed time in accordance with the place specified in the solicitation documents. Tenders should preferably be delivered directly or by an agent in order to obtain a receipt that the tender has been received by the tendering body.

The tender documents usually contain the time and place for submission of tenders, and the bidders cannot send the tender documents to a place other than the place specified in the tender documents, and if the bidder delays the tender time because of the error in the place where the tender was submitted, it will be regarded as an invalid tender and rejected.

If delivered by post, the bidder must allow time for mailing to ensure that the tender documents are delivered to the place designated by the tenderer before the deadline. Rather than "postmark prevailing". If the bidding documents delivered after the deadline have passed the validity period of the bidding, the bidder shall return them intact and shall not enter the bid opening stage.

Receipt and preservation of tender documents. After receiving the tender, the tenderer shall sign and receive it and shall not open it. In order to protect the legitimate rights and interests of bidders, bidders must perform complete signing, registration and filing procedures. The signatory shall record the date and place of submission of the bidding documents and the sealing status, and the signatories shall place all submitted bidding documents in a confidential and secure place after signing, and no one shall open the bidding documents.

In order to ensure that full competition is caused, if there are fewer than three bidders, the bidding shall be re-tendered. This situation is called "flow mark" in foreign countries. In accordance with international practice, at least three bidders can bring about effective competition, because two bidders participate in the bidding, and the lack of competition may cause bidders to raise the purchase price to the detriment of the interests of the bidders.

Article 29 Bidders may supplement, modify or withdraw the submitted bidding documents before the deadline for submitting bidding documents in the bidding documents, and notify the bidders in writing. Supplements and amendments are part of the tender documents.

【Interpretation】The provisions of this article are supplementary, amending or withdrawing the bidding documents.

Supplementation refers to the addition of omissions and deficiencies in the tender documents. Modification refers to the revision of what is already in the tender documents. Withdrawal means the withdrawal of all tender documents, either abandonment of tenders or new tenders with new tender documents.

Bidders may amend and supplement tender documents before the tender deadline. In the process of bidding and bidding, due to the different levels of understanding and understanding of the bidding documents by the bidders, some bidders often misunderstand the bidding documents, or the bidding documents have omissions in some important contents, and if the bidders need to supplement or modify, they can supplement or modify them before the deadline for submitting the bidding documents. Supplements or modifications are part of the tender documents. These amended and supplemented documents shall also be served in a sealed manner before the prescribed time and shall be an integral part of the bidding documents, and the bidder shall strictly perform the formalities of signing and registration, and shall be stored in a safe and confidential place, and shall be opened together at the time of opening of tenders. In the process of reviewing and approving bidding documents, the bidder or bid evaluation committee shall comprehensively examine the bidding documents.

Bidders also have the right to withdraw their own submissions. Bidders also have the right to withdraw tender documents that have been submitted before the tender deadline. This reflects the principle of freedom of contract, where tendering is generally regarded as an invitation to make an offer, while tendering is an offer, and the willingness of potential bidders to make an offer depends entirely on the wishes of potential bidders. Therefore, before the bidding deadline, bidders are allowed to withdraw bidding documents, but the withdrawal of bidding documents that have been submitted must be notified to the bidders in writing for the record to be examined. Bidders may either re-prepare the tender documents within the statutory time and deliver them to the designated place within the prescribed time, or they may withdraw the tender documents and abandon the tender. If a bid is abandoned before the bid deadline, the tenderer may not confiscate its bid deposit. If, after the bidding deadline, the bidder withdraws the tender documents that have already been submitted, the bid deposit will be forfeited.

Article 30 Where a bidder intends to subcontract part of the non-main body and non-key work of the winning project after winning the bid according to the actual situation of the project specified in the bidding documents, it shall be specified in the bidding documents.

【Interpretation】The provisions of this article refer to the content of subcontracting in the bidding documents.

The main part and key work of the project refer to the part of the main structure of the device, equipment, and structure of the whole project that affects its main function or independently plays its function and related work.

The contractor or supplier of the construction project shall, in accordance with the law, entrust the non-main part or non-key work of the project to a third party to complete, and be responsible to the bidder in its own name. In some tenders, especially for large tenders, it is not possible for bidders to do all the work alone. Once a bidder has won a bid, some of the work can be delegated to other suppliers or contractors. However, the main body and key work of the project must be completed by the successful bidder himself, and subcontracting to others is prohibited. This is to reflect the purpose of this Law and to ensure the effectiveness of the tender. If bidders are allowed to subcontract the main body, critical work to other contractors or suppliers, it is possible that the bidders will subcontract the winning project to suppliers and contractors who do not have the corresponding qualifications and capabilities, resulting in the failure of the bidding. Many of the quality problems that arise in practice are caused by bidders subcontracting the main and key parts of the project to other contractors and suppliers. For non-main and non-critical works, this law allows for subcontracting, but the bidder must indicate it in the bidding documents.

Subcontracting is a common form of international project contracting. Subcontractors are usually smaller in scale, but have obvious expertise in a certain part of the engineering field, such as some projects with high professional and technical requirements in some engineering construction or parts that require special construction machinery and equipment. The general contractor or main contractor enterprise is generally larger in scale, the comprehensive construction ability is stronger, and has a high level of construction management, and the selection of the appropriate subcontractor is conducive to the general contractor or the main contractor to combine its own advantages with the advantages of different professional subcontractors, reduce the project quotation, and improve the competitiveness.

Article 31 Two or more legal persons or other organizations may form a consortium to jointly bid as a bidder.

Each party to the consortium shall have the corresponding ability to undertake the bidding project; if the relevant provisions of the State or the bidding documents have provisions on the qualifications of the bidders, the parties to the consortium shall have the corresponding qualifications and conditions stipulated. A consortium composed of units of the same specialty shall be qualified according to the unit with a lower qualification level.

The parties to the consortium shall sign a joint bidding agreement, clearly stipulating the work and responsibilities to be assumed by the parties, and submit the joint bidding agreement together with the bidding documents to the bidder. Where the consortium wins the bid, the parties to the consortium shall jointly sign a contract with the bidder and bear joint and several liability to the bidder for the winning project.

Bidders shall not compel bidders to form a consortium to bid jointly, and shall not restrict competition among bidders.

【Interpretation】The provisions of this article are consortium bidding.

Two or more legal persons or other organizations may form a consortium to bid jointly as a bidder.

For large and complex projects, it is generally impossible to rely on the ability of one bidder to complete alone, such as large BOT projects, which are generally composed of a number of powerful companies, forming a bidding consortium and participating in the bidding together. Treating a consortium of legal persons or other organizations as a whole means treating the consortium as an independent bidder, rather than referring to the name of one of the members of the consortium. Bidding to form a consortium is a voluntary act of all parties to the consortium, and the bidders shall not compel the bidders to form a consortium to bid together, nor shall the bidders restrict competition between the bidders.

Each party to the consortium shall have the qualifications prescribed by this Law or the State and the corresponding ability to undertake the bidding project. This is a requirement for the qualification conditions of the bidding consortium. (1) Each party to the consortium shall have the necessary conditions for undertaking the bidding project, such as corresponding manpower, material resources, funds, etc. (2) Where the state or the solicitation documents have special requirements for the qualifications of the bidders, each member of the consortium shall have the corresponding qualification conditions stipulated. (3) Where a consortium is formed by a unit of the same specialty, the qualification level of the consortium shall be determined in accordance with the unit with a lower qualification level. For example, in the consortium composed of three bidders, two are Grade A qualifications and one is Grade B qualifications, and according to the provisions of this article, the qualification level of the consortium is low or high, and the qualification level of the consortium can only be determined as Grade B. The reason why this article provides for this is to promote the formation of a consortium of highly qualified bidders to prevent the acquisition of bidding projects with superior qualifications, but to be completed by suppliers or contractors with poor qualification levels to ensure the quality of bidding.

In order to regulate the rights and obligations of the parties to the bidding consortium, the parties to the consortium shall sign a written joint bidding agreement, specifying the work to be undertaken by the parties, and submit the joint bidding agreement together with the bidding documents to the bidder. If a dispute arises within the winning consortium, it may be resolved on the basis of a joint agreement.

Where the consortium wins the bid, the parties to the consortium shall jointly sign a contract with the bidder. In other words, it is not possible to sign a contract with the tenderer in the name of one of the bidders in the consortium, but all parties to the consortium must jointly sign a contract with the bidder, and the parties to the consortium bear joint and several liability for the winning project. If one of the parties in the consortium breaches the contract, the tenderer has the right to hold either of them fully responsible.

Article 32 Bidders shall not collude with each other in bidding and quotation, shall not exclude fair competition among other bidders, and harm the lawful rights and interests of bidders or other bidders.

Bidders must not collude with bidders to bid, harming the interests of the state, the societal public interest, or the lawful rights and interests of others.

Bidders are prohibited from seeking to win the bid by paying bribes to the bidders or members of the bid evaluation committee.

【Interpretation】This article prohibits collusion in bidding.

For general bidding projects, bidding and quotation will directly affect the bidding effect, so each bidder should reasonably determine the bidding price according to the requirements of the bidding documents and consider their own advantages and conditions. This Law prohibits bidders from using all kinds of improper means to exclude others from open competition. Bidders may not use improper means, especially collusion with each other to report prices, in order to exclude fair competition among other bidders.

The so-called collusion between bidders is the secret contact between bidders and the agreement on the bidding price, or the inflating of bidding prices or deliberately lowering the bidding quotations in order to achieve the purpose of excluding other bidders, thereby harming the legitimate rights and interests of bidders or other bidders. This phenomenon usually occurs when some bidders monopolize an industry or region, and they collude with each other to divide the market and obtain high profits. Collusion between bidders generally refers to: (1) mutual agreement between bidders to unanimously raise or lower the bidding price; (2) mutual agreement between bidders to take turns to win the bid at a high or low price in the bidding project; (3) internal bidding between bidders, internal bidders, and then participate in bidding.

Bidders must not collude with bidders to harm the interests of the State, the societal public interest, or the lawful rights and interests of others. Because the public ownership system occupies an important position in China's economic structure, the scope of compulsory bidding is mainly projects invested by state-owned funds, and the bidders are often the project owners, lack of self-restraint mechanism, and it is easy for bidders and bidders to collude and engage in false bidding, and obtain benefits from them to harm the interests of the state and other bidders. There are many forms of collusion, usually including: (1) the tenderer withdraws the tender, changes the quotation, or discloses the bid base before the open bid; (2) the bidder colludes to raise and lower the price, and eats kickbacks after winning the bid; (3) the tenderer contacts the bidder and discloses to the bidder information that must be kept confidential outside the bidding documents, such as the bidding floor, or the bidder discloses the information of other bidders to certain bidders, or implies in the bidding documents that a bidder or technical specification is clearly favorable to a bidder. Reaching an agreement or placing certain bidders in a favourable position in the bidding, to the detriment of the national interest.

Bidders shall not pay bribes to tenderers or members of the bid evaluation committee in order to win the bid.

Article 33 Bidders shall not bid on bids lower than the cost, nor shall they bid in the name of others or deceive in other ways to win the bid.

【Interpretation】This article is a provision for bidding by means of unfair competition.

Calculating the bid price by bidders is a crucial and serious task. It determines the success or failure of the bid and the profit or loss of the implementation of the project procurement. Bidders shall reasonably determine the bidding price and shall not participate in bidding at a bidding price lower than the cost. Each bidder has his own experience and habits, and has his own set of methods, procedures and quotation structure system for calculating bids. For example, unit price analysis method, coefficient method, analogy method, etc., or several methods are mixed. The target price of the project is generally composed of the following two parts: (1) the direct cost of the project, including labor costs, materials and permanent equipment costs, construction machinery costs, etc.; (2) the indirect costs of the project, including the expenses during the bidding period, the guarantee fee, the insurance fee, the tax, the business fee, the zero-hour facility fee, the loan interest, the construction management fee, etc.

According to Article 8 of the Price Law, "the basic basis for business operators' pricing is the cost of production and operation and the supply and demand of the market. "This is the basis for operators to set the price of goods. The production and operation costs based on pricing are the sum of various labor and materialized labor expenses incurred by operators in the process of producing commodities and providing services, similar to the concept of "expense" in the Accounting Standards for Business Enterprises, which includes both direct materials, direct labor and manufacturing costs, as well as financial expenses, management expenses and sales expenses. Only by accurately verifying the production cost can a reasonable price be established. The cost quotation referred to in this article should consider the average cost of the society and the individual cost of the enterprise, which is the basic basis for judging whether the bidding quotation is reasonable. Cost is the main part of the price, the basis on which the bidder estimates the bid price and the minimum economic limit. If the bidding price is lower than the cost, it will inevitably lead to the contractor or supplier cutting corners and shoddy in the contract execution project. Bidders competing for offers below cost are not only suicidal acts for themselves, but also undermine the order of the market economy, which is contrary to the goal of establishing a socialist market economy and is also inconsistent with the principle of fair and just competition in this Law.

This Act permits bidders to abandon their near-term interests and bid at cost prices in order to occupy the market or to create credibility, or for the sake of the company's long-term interests. In examining whether the bidder's bid price is lower than the cost, it must be calculated based on the average social cost and the individual cost of the enterprise, and cannot be based on the cost of a single bidder. When judging the cost price, we must also consider factors such as purchase and sale differences, batch zero differences, regional differences and seasonal differences.

Second, bidders must bid in their own name and cannot fraudulently bid in the name of others. In order to improve their qualification level, some bidders use the name of a unit with relatively high qualifications to participate in bidding, or in the bidding process, cheat, deceive bidding qualifications, and defraud winning bids, all of which are not allowed by this Law.

Chapter IV Bid Opening, Evaluation and Winning Bids

There are fifteen articles in this chapter, which stipulate the opening of bids, evaluation and winning of bids. The so-called opening of bids means that after the deadline for bidders to submit bids, the bidders open the bidding documents submitted by the bidders according to the time and place specified in the bidding documents, and publicly announce the name of the bidders, the bidding price and other main contents in the bidding documents. The so-called bid evaluation refers to the review, evaluation and comparison of the bidding documents according to the provisions and requirements of the bidding documents. The so-called winning bid means that the bid is successful and the contract is signed. Bid opening and evaluation is an important part of the selection of successful bidders and the success of tendering, so there are many rules and procedures that must be observed, which are stipulated in this chapter.

Article 34 The opening of bids shall be carried out in public at the same time as the deadline for submission of bidding documents determined in the bidding documents;

【Interpretation】The provisions of this article refer to the time and place of bid opening.

The so-called opening of bids means that after the deadline for bidders to submit bids, the bidders open the bidding documents submitted by the bidders according to the time and place specified in the bidding documents, and publicly announce the name of the bidders, the bidding price and other main contents in the bidding documents. "The opening of tenders shall be carried out in public at the same time as the deadline for submission of tender documents determined by the solicitation documents" refers to the time when the submission of tender documents is cut off (such as what time and minutes on a certain day in a certain month of a certain year), that is, the time of opening of tenders (also a few hours and minutes on a certain day in a certain month of a certain year). This is provided to prevent a period of time after the bid deadline and before the opening of tenders. Gaps may create opportunities for misconduct (e.g. disclosure of the contents of the tender documents before a specified bid opening time), even if the supplier or contractor waits until the last minute before the opening of the bids to submit the bid documents.

The place of opening of tenders shall be consistent with the place specified in the solicitation documents in order to prevent bidders from failing to submit the tender documents on time and as required because they do not know the change of location. This is also a provision made to safeguard the interests of bidders.

Article 35 The opening of bids shall be presided over by the bidders and all bidders shall be invited to participate.

【Interpretation】The provisions of this article are the host and participants of the bid opening.

Since the opening of bids is carried out in public, there should be a certain number of relevant personnel participating, so as to achieve openness and make the bidders' bids known to all bidders and relevant parties. In general, the opening of tenders is presided over by the tenderer; when the tenderer entrusts the tendering agency to bid on behalf of the tender, the tender opening may also be presided over by the agency. The presiding officer is responsible for the whole process of bid opening in accordance with the prescribed procedures. Other bid opening staff handle bid opening operations and make records.

Inviting all bidders or their representatives to attend the opening of bids can enable bidders to know whether the opening of bids is carried out in accordance with the law, which helps to convince them that bidders will not arbitrarily make inappropriate decisions; at the same time, it can also enable bidders to understand the bidding situation of other bidders, to know themselves and each other, and to roughly measure the possibility of winning their bids, which will also play a certain role in supervising the bidders' decision to win the bid. In addition, in order to ensure the fairness of the bid opening, representatives of relevant units are generally invited to participate, such as personnel of the competent department of the bidding project, members of the bid evaluation committee, representatives of the supervision department, etc. For some bidding projects, the bidder can also entrust the notary of the notary department to notarize the entire bid opening process in accordance with the law.

Article 36 When opening bids, the bidders or their elected representatives shall inspect the sealing of the bidding documents, and may also be inspected and notarized by a notary institution entrusted by the bidders; after confirmation, the staff shall open the seals in public and read out the names of the bidders, the bidding price and other main contents of the bidding documents.

All tender documents received by the tenderer before the deadline for submission of tender documents shall be opened and read out in public at the time of opening of tenders.

The bid opening process shall be recorded and archived for future reference.

【Interpretation】This provision is the basic process of bid opening.

When opening bids, the sealing of the bidding documents should first be checked in public; if the bidder entrusts a notary public, it may be inspected and notarized by the notary public. In general, tender documents are submitted in writing, signed and in a sealed envelope. Therefore, whether by mail or directly to the bid opening site, all tender documents should be sealed. This is to prevent the tender documents from being leaked in an unsealed condition, resulting in violations such as collusion between bidders and changes in bid prices. Only a sealed bid is considered a formally qualified bid (i.e. is it real?). In order to meet the requirements of the solicitation documents, it can be opened in public and the relevant quotation content is announced. Tender documents that are not sealed, or that have been opened, shall be considered invalid tenders and shall not be read out.

In order to ensure that bidders and other participants are aware of the bidding status of all bidders and to increase the transparency of the bid opening process, the names of the bidders, the bidding price and other main contents of the bidding documents shall be publicly announced to those present after the sealing of all bidding documents (i.e. the bidding documents received before the deadline for submission of bidding documents) has been determined to be correct. For the same purpose, the entire bid opening process needs to be documented and archived for future reference. The record of the opening of tenders shall generally record the following matters, which shall be signed and confirmed by the presiding officer and other staff: (1) if there is a case number, its case number; (2) the name and quantity of the bidding project; (3) the name of the bidder; (4) the bidding quotation; (5) the date of opening of the tender; (6) other necessary matters.

Article 37 The bid evaluation committee established by the bidder in accordance with law shall be responsible.

For projects that must be tendered according to law, the bid evaluation committee shall be composed of representatives of the bidders and experts on relevant technical and economic aspects, and the number of members shall be an odd number of more than five, of which experts in technical and economic fields shall not be less than two-thirds of the total number of members.

The experts mentioned in the preceding paragraph shall have been engaged in work in relevant fields for eight years and have senior professional titles or have the same professional level, and the bidders shall be determined by the bidders from the roster of experts provided by the relevant departments of the State Council or the relevant departments of the people's governments of provinces, autonomous regions, or municipalities directly under the Central Government, or from the list of experts in the expert pool of the bidding agency;

Persons with an interest in the bidder shall not enter the bid evaluation committee of the relevant project;

The list of members of the bid evaluation committee shall be kept confidential until the results of the bid are determined.

【Interpretation】The provisions of this article are the composition of the bid evaluation committee and the manner in which it is constituted.

Bid evaluation is the review, evaluation and comparison of bid documents in accordance with the provisions and requirements of the solicitation documents. Bid evaluation is a necessary procedure for reviewing and determining the successful bidder, is an important part of ensuring the success of the bid, therefore, in order to ensure the fairness of the bid evaluation, to prevent the bid inviter from influencing the evaluation results, the bid evaluation can not be borne by the bidder or its agency alone, but should form a committee with the participation of relevant experts and personnel, responsible for the evaluation of all the bid documents according to the evaluation criteria and methods specified in the bid invitation documents, recommend the winning candidate to the bidder or directly determine the successful bidder. The bid evaluation committee is organized by the bidder.

The bid evaluation committee shall include, in addition to the necessary representatives of the tenderers or their agencies, technical, economic, legal and other experts. Since bid evaluation is a complex professional activity, it is not possible for non-professionals to evaluate and compare bidding documents, and in order to ensure the fairness and authority of bid evaluation, this article stipulates that the number of experts shall not be less than two-thirds of the total number of members. Among the expert members, technical experts are mainly responsible for evaluating the technical parts of the bidding; economic experts are mainly responsible for evaluating the economic parts such as the quotation in the bidding; and legal experts are mainly responsible for evaluating the commercial and legal affairs in the bidding. Taking into account the above-mentioned experts and representatives of tenderers and their agencies, the number of bid evaluation committees should generally be more than 5. The reason for the singular number of more than 5 people is mainly to avoid the situation that the judges have an equal number of votes for the opposite opinion when voting to determine the winning candidate or the winning bidder.

The importance of the bid evaluation work determines that certain restrictions must be placed on the qualifications of experts participating in the bid evaluation committee, and not all professional and technical personnel can enter the bid evaluation committee. Paragraph 2 of this article stipulates the qualification conditions for experts, that is, (1) 8 years of work in the relevant field. This is a requirement for real-world work experience and business familiarity. (2) Have a senior professional title or have an equivalent professional level. This is a requirement for professional standards or job titles. The restrictions of the two conditions provide a guarantee for the quality of personnel for the smooth progress of bid evaluation. These conditions are also consistent with the requirements of other relevant laws on the professionals concerned. For example, the arbitration law stipulates that arbitrators should be engaged in arbitration, lawyer or trial work for 8 years, have a senior title or have the same professional level (article 13 of the Arbitration Law).

In order to prevent the subjective arbitrariness of the bidders in selecting bid evaluation experts, the bidders shall determine the bid evaluation experts from the roster of experts provided by the relevant departments of the State Council or the relevant departments of the provincial-level people's governments or from the expert pool of the bidding agency. Some special bidding projects, such as scientific research projects, projects with particularly complex technology, etc., because the experts determined by random sampling are not competent for the evaluation of bids, or only a few experts can be competent for the evaluation of bids, so the bidders can directly determine the expert candidates. A roster of experts or a pool of experts, also known as a talent pool, is a list or database of experts in that area of expertise, which is set up according to different specialties. The experts entered into the list or database should be all experts in the field who meet the above conditions, not a small number or individual experts.

To this end, all departments of the State Council, relevant departments of provinces, autonomous regions, and municipalities directly under the Central Government, and bidding agencies that have not set up an expert pool should form an expert pool as needed to ensure the smooth progress of the bidding work.

This article also establishes a system of recusal replacement of bid evaluation committee members. The so-called recusal replacement system means that those who have an interest in the bidder should recuse themselves and must not enter the bid evaluation committee; According to the relevant laws and regulations, in any of the following circumstances, it may be determined that there is an interest in the bidder: (1) it is a close relative of the bidder or its agent; (2) it has other social relations or economic interests with the bidder, which may affect the fair evaluation of the bidding.

The list of members of the bid evaluation committee shall be classified as confidential content and shall not be disclosed until the result of the winning bid is determined.

Article 38 The tenderer shall take necessary measures to ensure that the evaluation of bids is carried out under strict confidentiality.

No unit or individual may illegally interfere with or influence the process and results of bid evaluation.

【Interpretation】The provisions of this article are the confidentiality of the evaluation of the bid and the freedom from external interference.

The so-called strict confidentiality of bid evaluation means that the evaluation of bids is carried out in a closed state, the members of the bid evaluation committee shall not have any contact with the outside world, and the suggestions for inspection, evaluation and award of bids shall not be disclosed to the bidders or personnel unrelated to the procedure. Since the criteria and methods for bid evaluation are stipulated in the bidding documents, and the evaluation factors other than price factors and price factors and their quantitative calculation methods are listed, the so-called evaluation confidentiality is not to engage in another set of standards and methods for evaluation and comparison in addition to these standards and methods, but this evaluation process is an independent activity of the bidder and its evaluation committee, and has the right to keep the whole process confidential, so that the bidders and other relevant personnel do not know some of their opinions, opinions or decisions, Ways to interfere with the evaluation of bids can also stop the members of the bid evaluation committee from leaking and communicating the relevant information to the outside world, resulting in unfair bid evaluation. Of course, if the bidder has objections to the winning bid results after the winning bid result is determined, or even believes that his rights and interests have been infringed by the bidder, he has the right to raise objections to the bidders, and if the objection is not accepted, he can also submit an appeal to the relevant administrative supervision department of the state, or directly file a lawsuit with the people's court.

The bid evaluation activity is an independent activity of the tenderer and its bid evaluation committee, and should not be interfered with or affected by the outside world. This is an inevitable requirement for China's project legal person responsibility system and enterprise management autonomy. However, in real life, some state organs and their staff, especially leading cadres, often proceed from local protectionism and even personal interests, exert all kinds of pressure on the bid evaluation committee by approving notes, making phone calls, looking for talks, etc., interfere with the results of the bid evaluation, and some even directly decide on the successful bidders, or veto or change the winning bid results without authorization, seriously infringing on the legitimate rights and interests of the bidders and bidders. In order to effectively prevent the occurrence of such illegal interference and the phenomenon of affecting the process and results of bid evaluation, this article stipulates that no unit or individual may illegally interfere with or affect the process and results of bid evaluation, so it is very necessary.

Article 39 The bid evaluation committee may require the bidder to make necessary clarifications or explanations on the contents of the bidding documents that are not clear in meaning, but the clarifications or explanations shall not exceed the scope of the bidding documents or change the substantive content of the bidding documents.

【Interpretation】The provisions of this article are the clarification of the bidder's bidding documents.

After the deadline for submission of tenders, tender documents may not be supplemented or amended, which is a basic rule. However, if, during the evaluation of bids, it is found that the content of the bidding documents is unclear, inconsistent or obvious typographical (writing) errors or purely calculated errors, the bid evaluation committee shall notify the bidders to make clarifications or explanations to confirm the correct content. For obvious typographical (writing) errors or purely calculative errors, the Bid Evaluation Committee shall allow the bidder to make corrections. Both the request for clarification and the bidder's response should be in writing. The bidder's response must be signed by the legal representative or authorized agent as part of the tender documents.

However, the clarification or clarification of the bidder is only an interpretation and correction of the above circumstances, and shall not be subject to the following acts: (1) beyond the scope of the tender documents. For example, if the tender documents do not stipulate the content, they are supplemented when clarified; the tender documents stipulate that a particular condition is a precondition for a commitment, but is interpreted as another condition, etc. (2) Changing or seeking or proposing to change the substantive content of the bidding documents. The so-called change of substantive content refers to the change of the quotation, technical specifications (parameters), main contract terms and other contents in the bidding documents. The purpose of this change in substance is to make non-compliant tenders into compliant tenders or to turn less competitive tenders into more competitive tenders. For example, in an excavator tender, the tender documents specify that the engine is cooled by water cooling, and one bidder bids with an air-cooled engine, but in clarification, the bidder insists that it is a water-cooled engine.

If there are more bidding documents that need to be clarified, a clarification meeting may be held, at which the bid evaluation committee will separately question the bidders, first ask and answer questions orally, and then confirm them in writing within the specified time and make a formal written reply.

Article 40 The bid evaluation committee shall evaluate and compare the bid documents in accordance with the evaluation standards and methods determined in the bidding documents; where there is a bid base, it shall refer to the bid base. After the bid evaluation committee completes the bid evaluation, it shall submit a written bid evaluation report to the bidder and recommend qualified candidates for winning the bid.

The tenderer determines the successful bidder on the basis of the written evaluation report submitted by the bid evaluation committee and the recommended successful candidate. The tenderer may also authorize the bid evaluation committee to directly determine the successful bidder.

Where the State Council has special provisions on the evaluation of bids for specific bidding projects, those provisions shall prevail.

【Interpretation】The provisions of this article are the evaluation criteria and methods and the evaluation report.

1. Criteria and methods for bid evaluation.

Simply put, bid evaluation is the evaluation and comparison of tender documents. What kind of criteria and methods to evaluate according to is a key issue and a matter of principle for bid evaluation. In the solicitation documents, the tenderer sets out the criteria and methods for evaluating the tender, with the aim of making these criteria and methods known to potential bidders in order to consider how to conduct the tender and ultimately succeed. Then, whether these pre-listed standards and methods can be truly adopted in the evaluation of bids is the yardstick for measuring whether the evaluation is fair and equitable. In order to ensure this fairness and fairness in the evaluation of bids, the evaluation of bids must be in accordance with the evaluation criteria and methods specified in the solicitation documents, and no standards and methods not specified in the solicitation documents shall be adopted, nor shall the evaluation criteria and methods determined by the bidding be changed. This is also a common practice in countries around the world.

The criteria for evaluating bids generally include price criteria and relevant criteria other than price criteria (also known as "non-price criteria") and how these criteria are used to determine the successful tender. Non-price criteria should be as objective and quantifiable as possible, expressed by monetary amounts, or prescribed relative weights (i.e. "coefficients" or "scores"). Generally speaking, when evaluating goods, non-price standards mainly include freight and insurance premiums, payment plans, delivery times, operating costs, the effectiveness and matching of goods, the supply capacity of spare parts and services, related training, safety and environmental benefits, etc. In the service evaluation, the non-price standard mainly includes the qualifications, experience, credibility, reliability, professionalism and management ability of the bidders and the personnel involved in the service. In the project evaluation, the non-price standards mainly include the construction period, quality, the quality of the construction personnel and management personnel, and the past experience.

The method of bid evaluation is the specific method of using the evaluation criteria to evaluate and compare bids. There are generally three methods: (1) The lowest evaluation price method. The bid evaluation committee determines the monetary amounts for different aspects of each bid on the basis of the bid evaluation criteria and then compares those amounts with the bid price. The bid with the lowest price after valuation (i.e. "evaluation price") may be selected as the winning bid. (2) Scoring method. The bid evaluation committee determines the relative weights (i.e. "scores") of different aspects of each bid on the basis of the bid evaluation criteria, and the bid with the highest score is the best bid and may be used as the winning bid. (3) Reasonable minimum bid price method. That is, the requirements of the solicitation documents can be met, and the bid with the lowest bidding price can be selected as the winning bid. Of these three evaluation methods. The first two can be collectively referred to as the "comprehensive bid evaluation method".

The so-called "State Council has special provisions on the evaluation of bids for specific bidding projects" means that the State Council may make some special provisions on the evaluation of bids by the State Council on the basis of this Law for major projects involving the national economy and people's livelihood, projects involving national security and state secrets, and certain special service projects. If these provisions exist, they shall apply.

2. Refer to the base.

The practice of setting up a bidding base is a measure taken in view of the current development of China's construction market and national conditions, and is a concrete embodiment of the bidding system with Chinese characteristics. There is a certain range of up and down fluctuations in the bid floor, and the bid evaluation committee generally compares the bid prices within this floating range. However, the bid floor is not the standard price that determines whether a bid will be successful or not, but only a reference price for the evaluation and comparison of bids. Of course, if the tender rated as the lowest evaluation price exceeds the range specified in the bid floor, the tenderer shall investigate the reasons for the exceeding the bid floor and, if reasonable, the bid shall be valid; If the bid rated as the lowest evaluation price is significantly lower than the bid floor, the tenderer should also investigate and, if it is a reasonable cost price, the bid should also be valid.

3. Bid evaluation report.

The bid evaluation report is an important document submitted to the bidder after the bid evaluation committee has completed the bid evaluation. In the bid evaluation report, the bid evaluation committee must not only recommend the successful candidate, but also state the specific reasons for such recommendation. As an important basis for bidders to determine the bid, the bid evaluation report should generally include the following contents: (1) the evaluation of the bidder's technical solution, technical and economic risk analysis; (2) the evaluation of the bidder's technical strength and facility conditions; (3) the ranking of the bidder's bids that meet the evaluation criteria; (4) the issues that need further consultation and the requirements to be met through consultation.

The tenderer shall, on the basis of the evaluation report of the bid evaluation committee, finally determine the successful bidder among the recommended successful candidates (usually 1 to 3);

Article 41 The successful bidder's bid shall meet one of the following conditions:

(1) Be able to meet the comprehensive evaluation criteria specified in the bidding documents to the greatest extent possible;

(b) be able to meet the substantive requirements of the solicitation documents and shall have the lowest evaluated bidding price, unless the bidding price is lower than the cost.

【Interpretation】The conditions for winning the bid are stipulated in this article.

This article provides two conditions for winning the bid, with reference to international practice.

1. Winning bid with the best comprehensive evaluation.

As mentioned in the interpretation of the preceding article, the so-called comprehensive evaluation refers to the overall evaluation and comparison of bidding documents according to price standards and non-price standards. When this method of integrated bid evaluation is used, relevant factors other than price are generally converted into currency or weighted calculations are given accordingly to determine the lowest evaluation price (also known as the lowest valuation bid) or the best bid. A bid that is rated as the lowest evaluation price or the best bid is considered to be the best overall evaluation. Therefore, the lowest bid price does not necessarily win the bid. When adopting this method of bid evaluation, it should be avoided as far as possible to list only the relevant criteria other than price in general in the solicitation documents, but there is no provision on how to convert it into currency or give corresponding weighted calculations, and only when evaluating bids are specific evaluation calculation factors and their quantitative calculation methods are formulated, which has a tendency to be clearly beneficial to a certain bid.

2. The lowest bid price wins.

The so-called winning bid at the lowest bid price is the winning bid with the lowest bid price, but the premise is that the bid meets the substantive requirements of the solicitation documents. If the tender does not meet the requirements of the solicitation documents and is rejected by the tenderer, the tender price, no matter how low, is not taken into account. In selecting the successful bidder in this way, it must be noted that the bid price must not be lower than the cost. The cost referred to here should be understood as the individual cost of the tenderer himself, not the average cost of society. Due to technical and managerial reasons such as tenderers, their individual costs may be lower than the social average cost. Bidders should be protected and encouraged to bid at a price lower than the societal average cost but not less than their individual cost. If the bidder's price is lower than its own individual cost, it means that after the bidder obtains the contract, he may try to cut corners and shoddy in order to save money, causing irreparable losses to the bidder. If a bidder bids at a price lower than the individual cost for the purpose of crowding out other competitors, it constitutes an act of unfair competition dumped at a low price and violates the relevant provisions of China's Price Law and the Anti-Unfair Competition Law. Therefore, if the bidder's bidding price is lower than his own individual cost, he shall not win the bid.

In general, when a tenderer procures simple commodities, semi-finished products, equipment, raw materials, and other goods of the same performance, quality or easy comparison, the price can be used as the only factor to be considered in the evaluation of the bid, in which case the evaluation method of the winning bid at the lowest bid price can be used as the criterion for selecting the successful bidder. Thus, in this case, the contract is generally awarded to the bidder with the lowest bid price. However, if it is a more complex project, or if the tenderer's main consideration in bidding is not price but the bidder's personal skills and expertise and ability, then the principle of winning the bid at the lowest bid price is difficult to apply, and a comprehensive evaluation method must be used to select the best bid, so that the purpose of the bidder can be achieved.

Article 42 If, after evaluation, the bid evaluation committee finds that all bids do not meet the requirements of the bidding documents, it may reject all bids.

If all bids for projects for which tendering must be conducted in accordance with law are rejected, the tenderer shall re-bid in accordance with this Law.

【Interpretation】The provisions of this article are the abolition of all tenders and the re-bidding.

Usually, the solicitation documents stipulate that the tenderer may annul all tenders. There are generally two situations for the abolition of all tenders: one is the lack of effective competition, such as less than 3 bids; the other is that most or all of the bidding documents are not accepted, and there are mainly the following situations: (1) The bidder is not qualified. (2) Failure to bid in accordance with the provisions of the solicitation documents. (3) The bidding documents are tenders that do not meet the requirements. (4) Borrowing or fraudulently using the name or certificate of others, or bidding with forged or altered documents. (5) Forgery or alteration of bidding documents. (6) The tenderer proposes, directly or indirectly, to give, give or agree to give any form of remuneration or benefit to the tenderer or other interested persons, prompting the tenderer to take an act or decision in the procurement process or to adopt a certain procedure. (7) The bidder refuses to accept correction of the calculation error. (8) All bid prices or evaluation prices are significantly higher than the bidder's expectations.

This article focuses on the scrapping of tenders in which all tenders do not meet the requirements of the solicitation documents. The tenderer and the evaluation committee may have two criteria for judging that the tender is not in accordance with the requirements of the tender documents: the first criterion is that only the tender that meets all the terms, conditions and provisions of the tender document is a tender that meets the requirements; Deviations from the features, terms, conditions and provisions set out in the solicitation documents, i.e. the response to the substantive requirements and conditions set out in the solicitation documents, may still be regarded as a tender that meets the requirements. For these two criteria, the tenderer shall indicate in advance in the solicitation documents which one to adopt, and this deviation shall be quantified as much as possible so that it can be taken into account in the evaluation of bids.

There is no doubt that all bids have been abolished (rejected) and that the tenderer should re-bid. If the scrap is due to a lack of competition, consideration should be given to expanding the scope of advertising. If the tender is scrapped because a majority or all of the tenders do not meet the requirements of the solicitation documents, the original prequalified bidder may be invited to submit new tender documents. It should be noted here that tenderers must not scrap bids simply for the sake of obtaining the lowest price.

Article 43 Before determining the successful bidder, the bidder shall not negotiate with the bidder on the substantive content such as the bidding price and the bidding plan.

【Interpretation】The provisions of this article prohibit negotiations with bidders on substantive content.

The reason why the tenderer is prohibited from negotiating with the bidder on the substantive content of the bidding price, the bidding scheme (technical specifications), the main contract terms, etc., is to prevent the emergence of the so-called "auction" method, in which the bidder uses the bidding submitted by one bidder to exert pressure on another bidder to reduce the bid or otherwise more favorable bidding. Many bidders avoid bidding using this method, and even if they do, they raise their bid price during the negotiation process.

However, before the bidder determines the successful bidder, it is often necessary to exchange views with the bidder and clarify certain non-substantive issues, such as the arrangement of specific delivery tools, commissioning, the determination of the installation personnel, the slight adjustment of a certain technical measure, etc., which should not be prohibited. According to the provisions of article 46 of this Law, after the successful bidder has been determined, the bidder and the successful bidder shall not negotiate the substantive content in order to change the relevant substantive content stipulated in the solicitation documents and bidding documents. This is also a logical conclusion.

Article 44 The members of the bid evaluation committee shall perform their duties objectively and impartially, abide by professional ethics, and bear personal responsibility for the appraisal opinions submitted.

Members of the bid evaluation committee shall not have private contact with bidders and shall not accept property or other benefits from bidders.

The members of the bid evaluation committee and the relevant staff participating in the bid evaluation shall not disclose the evaluation and comparison of the bidding documents, the recommendation of the successful candidate and other information related to the evaluation of the bid.

【Interpretation】The provisions of this article are the professional ethics and disciplinary requirements of the bid evaluation committee.

The first paragraph of this article stipulates the general professional ethics of the members of the bid evaluation committee, that is, the evaluation of bids is out of an impartial heart, objective and comprehensive, does not favor or exclude a particular bid, and is responsible for the evaluation opinions of individuals.

Paragraph 2 of this article stipulates the prohibitive obligation of the members of the bid evaluation committee, that is, the obligation not to be an act. Since the members of the bid evaluation committee enjoy the important power to evaluate and compare bids and recommend the successful candidates, in order to win the bid, bidders often approach, co-opt or corrupt the members of the bid evaluation committee by giving money or other benefits. The so-called property mainly refers to money, valuables, etc.; the so-called other benefits refer to any other material or immaterial benefits other than money and property, such as inviting guests to eat, entertainment, traveling abroad, job transfers, job promotions, house decoration, pornographic services, and so on. In order to ensure the fairness and impartiality of the bid evaluation, the bid evaluation committee shall not contact the bidders privately and shall not accept gifts or other benefits from the bidders.

Paragraph 3 of this article provides for the confidentiality obligation of the members of the bid evaluation committee. Since article 38 of this Law stipulates that bid evaluation must be conducted in strict confidentiality, the members of the bid evaluation committee, as the direct bearers of the bid evaluation work, have the best knowledge of the evaluation and comparison of the bidding documents, the recommendation of the successful candidates and other relevant circumstances, so it is natural to have the obligation to keep the evaluation of bids confidential. Because the relevant bid evaluation staff has also been exposed to some situations in the bid evaluation process, they also have the obligation of confidentiality and must not disclose the above relevant information to the outside world.

Article 45 After the successful bidder is determined, the bidder shall issue a notice of winning the bid to the successful bidder, and at the same time notify all bidders who have not won the bid of the result of the winning bid.

The notice of winning the bid has legal effect on the bidder and the successful bidder. After the notice of winning the bid is issued, if the bidder changes the result of winning the bid, or the winning bidder abandons the winning project, it shall bear legal responsibility in accordance with law.

【Interpretation】The provisions of this article refer to the notice of winning the bid and its legal effect.

1. The nature of the notice of winning the bid.

After the successful bidder is determined, the bidder shall promptly (within 10 days in the case of countries and regions) notify the successful bidder and all unsuccessful bidders of the winning bid. The notice of winning the bid is a written notification document issued to the successful bidder informing the successful bidder of the winning bid. China's Contract Law stipulates that contracts are concluded in the form of offers and commitments. An offer is an expression of intent to enter into a contract with another person, which is specific in content and indicates that the offeror is bound by the offeror's acceptance; On this basis, it can be considered that the tender submitted by the bidder is an offer, and the notice of winning the bid of the tenderer is an acceptance of the tenderer's offer.

2. Entry into force of the notice of winning the bid and formation of the contract.

Article 26 of the Contract Law stipulates that the notice of undertaking shall take effect when it reaches the offeror, and if no notice is required, it shall take effect when the undertaking is made in accordance with the transaction customs or the requirements of the offer. This is the "reachivism" in which the commitment takes effect. However, as a commitment under the Tendering and Bidding Law, unlike the general commitments stipulated in the Contract Law, the notice of winning the bid cannot adopt the "arrival doctrine" but should adopt the "letter doctrine", that is, the notice of winning the bid takes effect when it is issued and is binding on the successful bidder and the tenderer. The reason is that, according to the requirements of the "arrival doctrine", even if the notice of winning the bid is issued in a timely manner, it is possible that there may be a delay, loss or wrong vote in the transmission process that is not due to the fault of the tenderer, resulting in the successful bidder failing to receive the notice within the validity period of the tender, and the tenderer loses the right to bind the successful bidder. According to the requirements of "letter-sending doctrine", the above-mentioned rights of the tenderer can be protected. This article stipulates that "if the bidder changes the result of the winning bid after the notice of winning the bid is issued, or the successful bidder abandons the winning project, it shall bear legal responsibility in accordance with law", indicating that this law also adopts "letter-sending doctrine".

Article 25 of the Contract Law stipulates that a contract is formed when an undertaking enters into force. Therefore, when the notice of winning the bid is issued, the legal effect of the commitment and the formation of the contract occurs. Therefore, after the notice of winning the bid takes legal effect, the bidder shall not change the result of the winning bid, and the bidder shall not abandon the winning project. The tenderer changes the result of the winning bid, changes the winning bidder, and the real? The above is an act of unilaterally tearing up the contract; the bidder abandoning the winning project is an act of non-performance of the contract. Both acts are breaches of contract and should therefore be liable for breach of contract. Article 107 of the Contract Law stipulates that "if one of the parties fails to perform its contractual obligations or the performance of its contractual obligations is not in accordance with the agreement, it shall bear the liability for breach of contract such as continuing to perform, taking remedial measures or compensating for losses", and article 112 stipulates that "if one of the parties fails to perform its contractual obligations or the performance of contractual obligations does not conform to the agreement, causing losses to the other party, the amount of damage compensation shall be equivalent to the losses caused by the breach, including the benefits that can be obtained after the performance of the contract." However, it shall not exceed the losses that may be caused by the breach of contract that the breaching party foresees or should have foreseen at the time of the conclusion of the contract". In addition, this law also stipulates that administrative legal liability may be pursued against the breaching party.

Article 46 The bidder and the successful bidder shall, within 30 days from the date of issuance of the notice of winning the bid, conclude a written contract in accordance with the bidding documents and the bidding documents of the successful bidder. The tenderer and the successful bidder shall not enter into other agreements that deviate from the substance of the contract.

If the bidding documents require the successful bidder to submit a performance bond, the successful bidder shall submit it.

【Interpretation】The provisions of this article are to conclude a written contract and provide a performance bond.

1. Conclusion of written contract and entry into force of contract.

After the notice of winning the bid is issued, it will be legally binding on both the bidder and the successful bidder, and the contract will be formed. This article stipulates that the tenderer and the successful bidder shall sign a contract within 30 days from the date of issuance of the notice of winning the bid, which is a mandatory provision and has two very important significances:

(1) Stipulate that the written contract shall take effect when the contract is signed. Article 44 of China's Contract Law stipulates that "a contract formed in accordance with law shall take effect upon its establishment." Where laws or administrative regulations provide that approval, registration, or other formalities shall take effect, follow those provisions." This is the general rule regarding the entry into force of a contract. However, due to the specific circumstances of the tendering method, the entry into force of the procurement contract is also relatively special. At present, there are roughly three different provisions internationally for the entry into force of procurement contracts. First, it shall take effect when the tenderer issues a notice of winning the bid to the successful bidder, that is, the contract shall take effect when the contract is formed. This provision is the same as the above-mentioned general provisions of China's Contract Law. Second, the contract takes effect when the successful bidder signs a written procurement contract that is in line with its bid, that is, when the written contract is signed, the contract becomes effective. Third, the procurement contract takes effect when it is submitted to the administrative authority for approval. It can be seen from this that, except for the first provision, where the contract becomes immediately effective, the other two provisions indicate that there is a certain time interval between the formation of the contract and the entry into force of the contract, and the conclusion of the contract does not mean that the contract will take effect immediately. The provisions of this article show that China's Law on Tendering and Bidding adopts the second provision mentioned above on the effectiveness of procurement contracts. However, where other laws or administrative regulations stipulate that approval, registration and other formalities should be completed before the contract takes effect, it belongs to the third provision mentioned above.

(2) Further clarify the rights and obligations of the parties to the contract. Signing a written contract, on the one hand, can make up for the shortcomings of the notice of winning the bid being too simple, on the other hand, the relevant substantive content specified in the bidding documents and bidding documents (including the clarification and modification of the bidding documents and bidding documents) can be further clarified and organized, and unified and fixed in the form of a contract, which is conducive to clarifying the relationship between the rights and obligations of both parties and ensuring the performance of the contract. The so-called signing of the contract within 30 days can be signed on the day of the issuance of the notice of winning the bid, or it can be signed on the 30th day after the notice of winning the bid is issued, which should be determined entirely by the two parties through consultation, and the law does not impose it.

It should be noted that the written contract signed between the tenderer and the successful bidder merely fixes the provisions, conditions and terms of the solicitation documents and tender documents in the form of a written contract, on which the tender documents and tender documents are the basis. Therefore, the conclusion of a written contract shall not require the bidder to undertake tasks other than the solicitation documents or modify the substantive content of the bidding documents, let alone sign another agreement departing from the substantive content of the contract; otherwise, because the contract (agreement) violates the original purpose of the bidding and bidding, the contract (agreement) shall be invalid.

2. Submission of performance bond.

It is a right of the tenderer to require the successful bidder to submit a performance bond of a certain amount. The security deposit shall be provided in the form of cash, cheque, performance guarantee or bank guarantee in an appropriate format and amount, as specified in the solicitation documents or in accordance with the decision of the tenderer after the evaluation of the tender, and shall be sufficient to urge the successful bidder to perform the contract. In general, the performance bond should be returned after the successful bidder has performed the contract. However, in the construction contract, the tenderer may extend a part of the deposit until the completion of the project, i.e. until the final acceptance of the project. In a contract for the purchase of goods or services, the tenderer may also extend a portion of the deposit until after installation or commissioning.

If the successful bidder refuses to submit a performance bond, it may be deemed to have abandoned the winning project (see the relevant provisions of article 45, paragraph 2 of this Law) and shall bear the liability for breach of contract. In this case, the tenderer may select the one with the highest ranking as the successful tender from the remaining tenders that are still valid, but the tenderer also has the right to reject all remaining tenders and reorganize the tender.

3. The nature of the performance bond.

Performance bonds differ from deposits, advances, and guarantees. According to article 115 of China's Contract Law, if the party who pays the deposit does not perform the agreed obligation, it has no right to demand the return of the deposit; if the party receiving the deposit does not perform the agreed debt, it shall return the deposit twice. Since this Law does not stipulate whether a tenderer who accepts a performance bond should double the performance guarantee when it does not perform the contract, we cannot regard it as a deposit. Second, performance bonds are also different from advance payments. The advance payment is part of the performance that one of the parties to the contract pays the contract price in advance before the performance of the contract to help the obligor better perform the contract. The advance payment does not follow the deposit penalty, that is, if the parties do not perform the contract after the advance payment is delivered, there is no problem of loss or double return. The performance bond, on the other hand, is not refundable. Finally, performance bonds are also different from guarantees. Guarantee is a guarantee method in which a third party agrees with the creditor that when the debtor does not perform the obligation, the third party will perform the debt, which belongs to the person's guarantee.

When the performance bond takes the form of a bank guarantee, it is most likely to be confused with the bank guarantee. Bank guarantee is a form of guarantee provided by a bank with its own property or credit for the debts of others, and it is also a kind of guarantee, a guarantee for a new person. The bank guarantee, which is used as a performance bond, is only the bank's guarantee to pay the corresponding guarantee amount from the account opening account of the successful bidder if it does not perform the contract. So the bank guarantee is real? It is still the guarantee of the successful bidder itself, not the guarantee of the bank as a third party.

In summary, the performance bond is a special measure provided for in this Law to urge the successful bidder to perform the debt, which is different from the statutory guarantee method of the debt.

Article 47 For projects for which bidding must be conducted in accordance with law, the bidder shall, within 15 days from the date of determining the successful bidder, submit a written report on the bidding and bidding situation to the relevant administrative supervision department.

【Interpretation】The provisions of this article are the filing system for bidding and bidding.

Article 3 of this Law stipulates the scope of the items that must be tendered, that is, the scope of compulsory tendering. These compulsory bidding projects are all state investment and financing projects, projects related to the public interest or public safety, or projects that use the state's unified external debt, so it is very necessary for the law to use bidding and bidding methods, which reflects the state's intervention and supervision of such civil activities. In order to effectively supervise the bidding and bidding of these projects and to discover the possible problems in them in a timely manner, it is necessary for the bidders to submit a written report on the bidding and bidding situation to the relevant administrative supervision departments of the state.

It is worth noting that the provisions of this article only require the bidder to submit a written report to the administrative supervision department for the record, which does not mean that the legal winning result and the contract must be reviewed and approved by the administrative department before it can take effect, unless otherwise provided by law.

Article 48 The successful bidder shall perform its obligations in accordance with the contract and complete the winning project. The successful bidder shall not transfer the winning project to others, nor shall he dismember the winning project to others separately.

The successful bidder may, in accordance with the contract or with the consent of the bidder, subcontract some of the non-main and non-key work of the winning project to others to complete. The person accepting the subcontract shall have the corresponding qualifications and shall not subcontract again.

The successful bidder shall be responsible to the bidder for the subcontracted project, and the person who accepts the subcontract shall bear joint and several liability for the subcontracted project.

【Interpretation】The provisions of this article are prohibited from contract assignment and subcontracts.

1. Performance of the contract.

After the tenderer signs the contract with the successful bidder, it shall be bound by the contract and perform the contract. This article stipulates that the successful bidder shall perform its obligations in accordance with the contract and complete the winning project, which is consistent with the provisions of article 60 of China's Contract Law that "the parties shall fully perform their obligations in accordance with the agreement". According to this requirement, the successful bidder must fully perform the contract, and must not partially perform, refuse to perform, delay performance, defective performance, and must not tear up the contract.

2. Contract assignment is prohibited.

Assignment contracts in a broad sense include the assignment of creditor's rights, the assumption of debts, and the general transfer of creditor's rights and debts (which are also divided into the general transfer of all creditor's rights and debts and the general transfer of some creditor's rights and debts). The assignment of the winning item (also known as "subcontracting") provided for in this article only refers to the general transfer of all creditor's rights and obligations, and refers to the transfer of its rights and obligations in the contract by one of the parties (the successful bidder) to a third party. According to the provisions of articles 89 and 79 of China's Contract Law, the contract of assignment must be subject to the consent of the other party, but the contract may not be transferred in any of the following circumstances: (1) it shall not be transferred according to the nature of the contract; (2) it shall not be transferred according to the agreement of the parties; (3) it shall not be transferred according to the provisions of the law. Since when the bidder determines the successful bidder by means of bidding, in addition to the price factor, the main consideration is the personal performance ability of the successful bidder; at the same time, in order to prevent the successful bidder from reaping the profits through the transfer contract layer by layer and ensuring the quality of the project, paragraph 1 of this article makes a prohibitive provision that the contract shall not be transferred.

Dismembering the winning project into small parts and transferring it to others is only a form of "retail" subcontracting, which is still subcontracting in essence and is therefore prohibited.

3. Subcontracts.

The subcontract provided for in this article refers to the transfer of part of its rights and obligations in the contract by one of the parties to a third party, that is, the general transfer of part of the creditor's rights and debts. Therefore, both the subcontract and the assignment contract are general transfers of creditor's rights and obligations. However, the difference between a subcontract and an assignment contract is that the successful bidder (contractor) may subcontract with the consent of the bidder (the contractor) or in accordance with the contract, which is generally not prohibited by law. The reason why the subcontracting contract is allowed is because the successful bidder (contractor) does not necessarily have an advantage in completing a certain part of the work, and subcontracting the part to a third party with an advantage to complete it is not only not harmful but beneficial to the bidder (the contractor). However, paragraphs 2 and 3 of this article still impose some restrictions on subcontracting contracts, including: (1) subcontracting can only be part of the non-main and non-critical work of the winning project; The main body or key work shall not be subcontracted. (2) The third party who accepts the subcontract shall have the corresponding qualifications for completing the subcontracting task. (3) The person who accepts the subcontract shall not subcontract again. (4) The person accepting the subcontract shall bear joint and several liability for the subcontracted project. The so-called joint and several liability means that when the successful bidder and the subcontractor are creditors, they have the right to request the bidder as the debtor to perform all their obligations (such as paying the price, etc.); when they are debtors, they are obliged to perform all the debts to the bidder as creditors (referring to the completion of the subcontracted project), and all the debts are extinguished by one full performance. It can be seen that the above restrictions are also necessary to ensure the quality of the project and prevent the profits from being collected through subcontracting. Article 272 of the Contract Law makes similar provisions on construction contracts.

Chapter V: Legal Liability

This chapter has a total of 16 articles, which make a more comprehensive provision on illegal acts and legal liabilities in bidding and bidding activities.

The so-called legal liability refers to the mandatory adverse consequences that the actor should bear due to the violation of the obligations stipulated by law or contractually agreed upon. Legal liability generally includes the following constituent elements: subject, fault, illegal act, damage facts and causation.

The subject is the responsible subject, which refers to the subject of the illegal act or the subject that bears legal responsibility. The subjects of responsibility provided for in this Chapter are the tenderers, bidders, tendering agencies, relevant administrative supervision departments, members of the bid evaluation committee, directly responsible supervisors and other directly responsible personnel of the relevant units, as well as any unit or individual that interferes with the normal conduct of bidding and bidding activities;

Fault refers to the subjective intent or negligence of assuming responsibility, and in the legal liability provided for in this chapter, some of which are necessary for the perpetrator to be at fault, and some are not required for the actor to be at fault;

Illegal conduct refers to conduct committed by the perpetrator that harms the interests of the state, the societal public interest, or the lawful interests of others;

The fact of damage, i.e. the fact of loss or injury suffered, including personal, property, moral loss and injury;

Causation refers to the relationship between the offence and the fact of damage between the causation and the causation.

Legal liability can be divided into civil liability, administrative liability and criminal liability. Civil liability is the legal consequence that the civil offender must bear according to law. That is, a form of state coercion adopted by the civil law for civil offenders in accordance with the law for the purpose of restoring the infringed rights and is linked to certain civil sanctions; administrative liability refers to the administrative legal consequences that the subject of the administrative legal relationship should bear in accordance with the law when it violates administrative management regulations; criminal liability refers to the criminal sanctions provided for by the criminal law, which are applicable to those who violate the criminal law and are guaranteed by the coercive power of the State.

This chapter also stipulates civil liability, such as damages; criminal liability, such as criminal detention and fixed-term imprisonment for the crime of dereliction of duty and malpractice; and administrative liability, such as ordering corrections, warnings, etc.

Article 49 Where, in violation of the provisions of this Law, a project that must be tendered is not tendered, the project that must be tendered is reduced to zero, or the tendering is circumvented by any other means, it shall be ordered to make corrections within a time limit and may be fined not less than 5/10000 of the amount of the project contract; for projects that use state-owned funds in whole or in part, the implementation of the project may be suspended or the allocation of funds may be suspended, and the directly responsible supervisors and other directly responsible personnel of the unit may be punished in accordance with law.

【Interpretation】The provisions of this article are the legal liability of the tenderer for the project that must be tendered without bidding or circumventing the tender.

1. Illegal acts provided for in this Article

1. Projects that must be tendered and are not tendered. In accordance with the provisions of this Law, bidding must be held for the following engineering construction projects within the territory of the People's Republic of China, including the survey, design, construction, supervision of projects, as well as the procurement of important equipment and materials related to project construction: large-scale infrastructure, public utilities and other projects related to the public interest and public safety; projects that use state-owned funds to invest or finance in whole or in part; and projects that use loans and assistance funds from international organizations or foreign governments Other projects that must be tendered by law or the State Council. The reason why the law requires the above projects to be tendered is because the funds for the project come from taxpayers or international financial organizations, foreign government loans or aid funds, and because the project involves public interest and public safety. Procurement through bidding can achieve the legislative purpose of "protecting the national interests, the social public interest and the legitimate rights and interests of the parties to the bidding and bidding activities, improving economic benefits, and ensuring the quality of the project". If the project unit fails to bid for the above projects that must be tendered, it constitutes an illegality.

2. Reducing the number of projects that must be tendered to zero in order to circumvent bidding. Article 3 of this Law sets out the scope of compulsory tendering, but this does not mean that all projects within this scope must be tendered. For bidding projects within the scope of the law, a certain limit must be reached before compulsory bidding is required, and the law does not require projects below the limit to be tendered. The so-called bidding limit refers to the scale, standard or value that the project that must be tendered needs to be achieved. If the individual contract value of the procured project is lower than the tendering limit, even if the project is of a type that must be tendered by law, there is no need to tender because it is below the mandatory tendering limit standard. Therefore, in real life, such a phenomenon often occurs: in order to achieve the purpose of avoiding bidding, some project units adopt methods such as splitting and dismemberment to break up single contract projects into zero, so that the single contract projects after being split and dismembered are lower than the bidding limit, thereby circumventing bidding.

3. Adopting other methods to circumvent bidding. Other acts of circumventing bidding, such as concealing the truth of the facts, deliberately confusing the nature of funds and construction projects, or using various means to provide false information, under the pretext of complex project technology and limited suppliers and contractors, etc., to achieve the purpose of circumventing public bidding. Since it is impossible for legislation to exhaust the methods of circumvention of tenders that may arise in real life, it is necessary to provide for "bottom-up" clauses such as "other methods of circumventing tenders" in order to avoid loopholes in the law.

2. The subject of legal liability provided for in this Article shall be the directly responsible supervisor or other directly responsible personnel of the tenderer and the project unit. Natural persons bearing the legal responsibilities provided for in this article must have the capacity to be responsible. The so-called capacity for responsibility refers to the ability or qualification of the actor to bear legal responsibility in accordance with law. The capacity for responsibility is closely related to the age, intellectual state, physical health status, etc. of natural persons, and varies according to the differences in civil, administrative and criminal liability.

3. To constitute the legal liability provided for in this Article, the perpetrator must be subjectively at fault, including intent and negligence, but the main one is intentional. The so-called intentional refers to a subjective state of mind in which the perpetrator hopes or allows the harmful result to occur when he knows that his or her behavior will cause some harmful consequences. The so-called negligence refers to a subjective state of mind in which the perpetrator should have foreseen that his or her actions would cause some kind of harmful consequences but did not foresee it, or that although it was foreseen, it was credulously believed that it could be avoided. Even if there are the above acts, and the perpetrator is not subjectively at fault, he shall not bear legal responsibility.

4. It constitutes legal liability as provided for in this article and does not need to have illegal consequences. As long as the perpetrator objectively commits the aforementioned illegal act and is subjectively at fault, the perpetrator shall bear legal responsibility even if the act did not cause actual damage.

5. The form of legal liability provided for in this Article

The legal liability provided for in this article is administrative. According to the different subjects that bear administrative responsibility, administrative responsibility is divided into administrative responsibility borne by administrative subjects, administrative responsibilities borne by State civil servants, and administrative responsibilities borne by administrative counterparties. From the perspective of the form of administrative responsibility, administrative liability includes compensation for losses, performance of duties, restoration of the right to be damaged, administrative sanctions and administrative penalties. Administrative sanctions refer to the punitive measures given by state administrative organs to civil servants who violate the law and derelict their duties in accordance with their administrative affiliation. According to article 33 of the Interim Regulations on State Civil Servants, there are six forms of administrative sanctions, namely, warning, demerit, major demerit, demotion, dismissal and expulsion. Administrative punishment refers to the sanctions imposed by administrative entities on administrative management counterparts who have violated administrative laws, regulations and rules and have not yet constituted a crime. The types of administrative penalties provided for in the Administrative Punishment Law of the People's Republic of China include: warnings, fines, confiscation of illegal gains, confiscation of illegal property, orders to stop production and business, temporary suspension or revocation of licenses, temporary withholding or revocation of permits, administrative detention, and other administrative penalties provided for by laws and regulations.

The forms of administrative legal liability provided for in this article are:

1. Order correction within a time limit. Ordering correction within a time limit is a specific means to realize the remedial function of administrative punishment, and is a measure for administrative organs to require the offending party to correct the illegal state. The aim is to require the offending party to restore the wrongful state to a lawful state. The order for correction within a time limit provided for in this article refers to the relevant administrative supervision department requiring the project unit with the above-mentioned illegal acts to correct its behavior of circumventing bidding within a certain period of time and bidding for projects subject to compulsory bidding, so as to eliminate the adverse effects or adverse consequences caused by the evasion of bidding.

2. Fines. Fines refer to an economic punishment imposed by administrative organs on individuals or organizations that violate administrative laws and norms and fail to perform their legally prescribed obligations, which is to make individuals and organizations bear new monetary payment obligations. The fine must be a major act, and the penalty organ must make a formal written decision, clearly stipulate the amount of the fine and the time limit for payment in accordance with the law, and give the fined person the right to appeal and file a lawsuit in accordance with the regulations. Fines are different from fines: the former is a type of additional punishment in the punishment and can only be imposed by the people's court. According to the provisions of this article, in addition to making corrections within a time limit, the administrative supervision department may also impose a fine of not less than 5/1000 to 10/1000 of the project contract amount on the project unit that has committed the above-mentioned illegal acts. The so-called fine can be imposed means that for the perpetrator of the violation, the relevant administrative supervision department may decide whether to give a fine according to the severity of the circumstances. In layman's terms, it means that fines may or may not be imposed, and the relevant administrative supervision departments enjoy discretion.

3. For projects that use state-owned funds in whole or in part, the implementation of the project may be suspended or the allocation of funds may be suspended. The premise of suspending the implementation of the project or suspending the allocation of funds is that the project must use state-owned funds in whole or in part, and the suspension of disbursement can only be state-owned funds, so as to prompt the project unit to correct its illegal acts.

4. Sanctions. Sanctions include administrative and disciplinary sanctions. The object of administrative sanctions is the supervisor and other directly responsible personnel directly responsible for the project unit. The types of administrative sanctions include warnings, demerits, major demerits, demotions, demotions, expulsions, and so forth. The relevant administrative supervision departments may make different administrative punishment decisions based on the seriousness of the circumstances of the illegal conduct.

Disciplinary punishment refers to punitive measures given by relevant social organizations to members who violate their internal rules and regulations. If the responsible person is a party member, the corresponding party disciplinary punishment (warning, expulsion from the party, etc.) is given; the responsible person is a member of the relevant industry association, and the association can give him the punishment of lowering the qualification level according to the actual situation. Disciplinary action and legal liability are two different concepts. The former violates the internal rules and regulations of social organizations, while the latter violates the laws and regulations of the state; secondly, disciplinary punishment is not backed by the coercive power of the state, while legal responsibility is backed by the coercive power of the state.

Article 50 Where a bidding agency violates the provisions of this Law by divulging the circumstances and materials related to bidding and bidding activities that should be kept confidential, or colludes with bidders or bidders to harm the interests of the State, the societal public interest, or the lawful rights and interests of others, it shall be fined not less than 50,000 yuan but not more than 250,000 yuan, and the supervisors and other directly responsible personnel directly responsible for the unit shall be fined not less than 5 percent but not more than 10 percent of the amount; Suspension or even cancellation of bidding agency qualifications; where a crime is constituted, criminal responsibility shall be pursued in accordance with law. Whoever causes losses to others shall bear the liability for compensation in accordance with law.

Where the acts listed in the preceding paragraph affect the outcome of the winning bid, the winning bid shall be invalid.

【Interpretation】The provisions of this article are the legal liability of the bidding agency for its illegal acts.

First, the illegal acts of the tendering agency provided for in this article

1. Violating the provisions of this Law by divulging circumstances and materials related to bidding and bidding activities that should be kept confidential. Article 22 of this Law stipulates that the tenderer shall not disclose to others the name and number of potential bidders who have obtained the solicitation documents and other circumstances related to tendering and bidding that may affect fair competition. If the bidder has a bid base, the bid base must be kept confidential. Article 38 stipulates that the tenderer shall take the necessary measures to ensure that the evaluation of bids is carried out in strict confidentiality. Article 44 stipulates that members of the bid evaluation committee and relevant staff involved in the evaluation of bids shall not disclose the evaluation and comparison of bidding documents, the recommendation of successful candidates and other information related to bid evaluation. The tendering agency shall, when it is the agent of the tenderer, directly participate in and organize the tendering and bidding activities, so the above requirements of this Law for the tenderers and members of the bid evaluation committee also apply to the tendering agency. If a bidding agency discloses the circumstances and materials related to bidding and bidding activities that should be kept confidential, it will affect the bidders' fair competition and fail to achieve the purpose of bidding.

2. Violating the provisions of this Law by colluding with bidders or bidders to harm the interests of the State, the societal public interest, or the lawful rights and interests of others. In the bidding agency activities, the relationship between the bidding agency and the bidder is the relationship between the agent and the principal, and the bidding agency is in the position of the agent. Paragraph 2 of article 66 of the General Principles of the Civil Law stipulates that if an agent colludes with a third party to harm the interests of the principal, the agent and the third party shall bear joint and several liability. Article 67 stipulates that if the agent knows that the matter entrusted to the agent is illegal and still carries out the agency activities, or the principal knows that the agent's act of agency is illegal and does not object, the principal and the agent shall bear joint and several liability. In addition, in compulsory bidding projects, since a considerable part of the funds come from government financial investment, there will also be cases where agents and principals, that is, bidding agencies and bidders collude with each other to harm national interests.

Second, the subject of legal liability provided for in this article is the tendering agency, the directly responsible supervisor of the tendering agency and other directly responsible personnel.

Third, to constitute legal liability under this article, the perpetrator should be subjectively at fault, including intent and negligence. In the case of collusion with bidders or bidders to harm the interests of the State, the societal public interest, or the lawful rights and interests of others, the perpetrator should subjectively have the intention to commit the illegal act. The intention referred to here means that the perpetrator has sufficient knowledge or understanding of the purpose and consequences of the act, and does not mean that the actor knows that his act is illegal.

Fourth, it constitutes legal liability under this article and does not require that the illegal act cause actual damage consequences. As long as the perpetrator commits the aforementioned illegal act and proves that he is subjectively at fault, the actor shall bear legal responsibility.

Fifth, the form of legal liability provided for in this article

1. Fines. For bidding agencies that have illegal acts provided for in this article, the relevant administrative supervision departments shall impose a fine of between 50,000 and 250,000 yuan, and the directly responsible supervisors and other directly responsible personnel of the unit shall be fined not less than 5% but not more than 10% of the amount of the unit fine;

2. Confiscation of illegal gains shall also be imposed. Confiscation of illegal gains is a punishment method carried out by an administrative entity that collects part or all of the illegal income, articles or other illegally possessed financial possessions of the administrative offender into the ownership of the State. Confiscation may be decided, depending on the gravity of the circumstances, in part or in its entirety. Confiscated articles, with the exception of those which shall be destroyed and archived for future reference, shall be handed over to the State Treasury or handed over to the statutory special authorities for disposal. Confiscation of unlawful gains is different from the confiscation of property in criminal law. Confiscation of property is a penalty in which part or all of the property owned by an individual criminal is forcibly and uncompromisedly returned to the state. The difference between the two is mainly manifested in: First, the nature is different. Confiscation of property is a criminal punishment, confiscation of illegal gains is an administrative punishment, not a legal consequence of criminal punishment; Confiscation of property is limited to the personal property of criminals, while the object of confiscation of illegal gains is illegal income such as stolen money and stolen property; Confiscation of property mainly applies to criminal acts, and the confiscation of illegal gains can be applied to both general administrative violations and serious administrative violations According to the provisions of this article, if the bidding agency has illegal gains due to the above-mentioned illegal acts, the relevant administrative supervision departments shall also confiscate the illegal gains. Concurrent punishment is a concept as opposed to a single place, which means that the administrative subject applies two or more administrative punishment methods to a certain illegal act of the other party in accordance with the law. Specifically to this article, it means that the relevant administrative supervision departments shall, while imposing fines on the perpetrators of illegal gains, confiscate their illegal gains into the ownership of the State.

3. Pursue criminal responsibility in accordance with law. Criminal liability refers to the criminal sanctions provided for in the criminal law, applicable to persons who violate the criminal law and guaranteed by the coercive power of the State. The assumption of criminal responsibility presupposes that the perpetrator's conduct constitutes a crime. According to article 13 of the Criminal Law of the People's Republic of China, a crime refers to any crime that endangers national sovereignty, territorial integrity and security, splits the country, subverts the regime of the people's democratic dictatorship, overthrows the socialist system, undermines social order and economic order, infringes on state-owned property or property collectively owned by the working masses, infringes on the property owned by citizens' private ownership, infringes on citizens' personal rights, democratic rights and other rights, and other acts that endanger society, and is punishable by criminal punishment in accordance with the law. However, if the circumstances are obvious and minor, the harm is not large, and it is not considered a crime. Crimes have certain social harm, criminal illegality and punishable nature. Where a bidding agency violates the provisions of this Law and constitutes a crime, it shall be investigated for criminal liability in accordance with law. According to the provisions of the Criminal Law, where a unit commits a crime, it shall be fined, and the supervisors and other directly responsible personnel of the unit shall be punished accordingly, that is, the dual punishment system shall be implemented.

4. Suspension or cancellation of bidding agent qualifications. Suspension or cancellation of bidding agency qualifications is an act penalty, that is, a penalty measure that restricts or deprives the offender of a certain capacity or qualification, sometimes referred to as a capable penalty. According to the provisions of this Law, bidding agencies engaged in bidding agency business shall have corresponding qualifications, and bidding agencies without corresponding qualifications cannot engage in relevant bidding agency business. Article 14 of this Law stipulates that the qualifications of bidding agencies engaged in the bidding business of engineering construction projects shall be determined by the Competent Administrative Department of Construction under the State Council or the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government, and the specific measures shall be formulated by the competent administrative department for construction under the State Council in conjunction with the relevant departments of the State Council. The competent department for the qualification determination of bidding agencies engaged in other bidding agency business shall be prescribed by the State Council. According to the provisions of this article, if the conduct of the bidding agency in disclosing the content that should be kept confidential or the collusive conduct is serious, the relevant administrative supervision department shall suspend or even cancel its qualification as a bidding agent. The "serious circumstances" referred to here refer to situations such as serious harmful consequences caused by the perpetrator's conduct and the bad nature of the illegal act. Suspension of bidding agency qualifications refers to the suspension of the bidding agency qualifications of the bidding agency within a certain period of time by the relevant administrative supervision department, during which the bidding agency whose bidding agency qualification has been suspended has lost the qualification of the bidding agent and cannot handle the bidding agency business, and will resume the bidding agency qualification after correcting its illegal behavior. Where the illegal conduct of the bidding agency is serious, and the suspension of the bidding qualification is not sufficient to achieve the purpose of sanctions, the relevant administrative supervision department shall cancel its bidding agency qualifications. Tender agencies that have been disqualified from tendering agents will never be able to engage in tendering agency business.

5. Damages. Damages refer to the civil liability of one party to compensate the other party for damages caused to the other party due to tortious acts or non-performance of obligations, including damages for infringement and damages for breach of contract. The former falls under the category of tort liability, while the latter falls within the category of liability for breach of contract. The significance of distinguishing between damages for breach of contract and damages for infringement is that: First, the scope of compensation is different, the damages of infringement can include compensation for moral damage, while the damages for breach of contract generally only include compensation for property damage, excluding compensation for moral damage; secondly, the burden of proof is different, according to the provisions of the Contract Law, the liability for breach of contract implements no-fault liability, as long as the breach of contract of the actor causes losses to the other party, the actor should bear civil liability. The breaching party is not required to prove the fault of the breaching party. On the contrary, since tort liability generally implements fault liability, if the victim wants to make the infringer liable, he must prove that the infringer was at fault at the time of committing the tortious act, otherwise the perpetrator does not bear legal liability.

Whether the above-mentioned illegal acts of the bidding agency are tortious acts or breaches of contract need to be specifically analyzed: the acts of the bidding agency in disclosing the circumstances or materials related to the bidding activities that should be kept confidential, as well as the acts of colluding with the bidders to harm the interests of the state or a third party, are of course tortious acts, and the compensation liability arising therefrom is tort liability; the acts of the bidding agency colluding with the bidders to harm the interests of the state, the social public interest or the legitimate rights and interests of others have the dual nature of breach of contract and tortious acts. The reason is that, on the one hand, the collusion between the bidding agency and the bidder violates the obligations stipulated in the entrustment agency contract reached between the bidding agency and the bidder; on the other hand, the collusion between the bidding agency and the bidder has the consequence of infringing on the personal and property rights and interests of the other party. The resulting liability for compensation is both tort liability and breach of contract liability, resulting in a competition between tort liability and breach of contract liability. Article 122 of the Contract Law stipulates that if the breach of contract of one party infringes on the personal or property rights and interests of the other party, the injured party has the right to choose to require it to bear the liability for breach of contract in accordance with this Law or to require it to bear tort liability in accordance with other laws.

To constitute liability under this article, it must be that the conduct of the actor caused loss to others. The "others" referred to here include bidders, bidders, third parties, and also the national and social public interests.

Sixth, declare the winning bid invalid

If the above-mentioned illegal acts of the bidding agency affect the outcome of the winning bid, the relevant authority may declare the winning bid invalid. The so-called invalidity of the winning bid means that the final decision of the bidder is not legally binding.

1. The premise of declaring the winning bid invalid. The premise of declaring the winning bid invalid is that the illegal act of the bidding agency affects the outcome of the winning bid. The so-called influence on the winning bid results refers to the fact that the act of the bidding agency leaking the circumstances or materials related to the bidding activities that should be kept confidential has caused the disappearance of the basis for equal competition between the bidders, and the collusion between the bidding agency and the bidders and bidders has made the bidding form and lost the significance of the bidding; the contract has been awarded to the bidder who should not have won the bid or the bidder who should have won the bid failed to win the bid.

2. Legal consequences of invalidation of winning bids. In the case that the tenderer has not signed a written contract with the successful bidder, the notice of winning the bid issued by the tenderer loses its legal binding force, the tenderer has no obligation to sign the contract with the successful bidder, and the successful bidder loses the right to sign the contract with the tenderer.

If a written contract has been signed between the parties, the signed contract shall be invalid. According to the Provisions of the General Principles of the Civil Law and the Contract Law, the invalidity of a contract has the following consequences:

(1) Restitution; the so-called invalidity of the winning bid is in fact the invalidity of the contract concluded between the bidder and the bidder in accordance with the bidding procedure after the conclusion of the contract. According to the provisions of the Contract Law, an invalid contract is not legally binding from the outset. Property acquired as a result of the contract shall be returned; if it cannot be returned or is not necessary, it shall be compensated at a discounted price.

(2) Compensation for losses. The party at fault shall compensate the other party for the losses suffered as a result, and if both parties are at fault, they shall each bear corresponding responsibility. Specific to the provisions of this Article, if the winning bid is invalid because of the illegal conduct of the bidding agency, the bidding agency shall compensate the bidder or the bidder for the losses suffered as a result. If the bidder or bidder is also at fault, each bears the corresponding responsibility. According to the provisions of the General Principles of Civil Law, if the tenderer knows that the tendering agency is engaged in illegal acts and does not object, it shall bear joint and several liability to the third party together with the tendering agency.

(3) Re-determination of the successful bidder or re-bidding. Article 64 of this Law stipulates that if a project that must be tendered according to law violates the provisions of this Law and the winning bid is invalid, the winning bidder shall be re-determined from among the remaining bidders or re-tendered in accordance with this Law in accordance with the conditions for winning the bid stipulated in this Law.

Article 51 Where a bidder restricts or excludes potential bidders with unreasonable conditions, discriminates against potential bidders, compulsorily requires bidders to form a consortium to bid jointly, or restricts competition between bidders, he shall be ordered to make corrections and may be fined not less than 10,000 yuan but not more than 50,000 yuan.

【Interpretation】The provisions of this article are the legal liability of the bidder for its illegal acts of restricting or excluding bidding competition.

First, the illegal acts provided for in this article

1. Restrict or exclude potential bidders on unreasonable terms. In order to enable the bidder to successfully complete the bidding project after winning the bid, the bidder often conducts a qualification review of the bidder when conducting the bidding, that is, the bidder's qualifications, past performance, capital situation, reputation and other aspects are reviewed. In tendering practice, prequalification is an effective method because it exempts bidders who do not have the opportunity to be awarded a contract from the cost of preparing tenders; However, qualification examination is also often used by bidders as a means for bidders to restrict or exclude potential bidders. In order to achieve the purpose of excluding or restricting potential bidders, tenderers often put forward unreasonable conditions or requirements in the prequalification documents, so that some potential bidders lose the opportunity to participate in the bidding. In addition, solicitation documents may also be abused by tenderers for the purpose of restricting or excluding potential bidders. In view of this, article 18, paragraph 2, of this Law stipulates that tenderers may not restrict or exclude potential bidders on unreasonable terms and may not discriminate against potential bidders. Because the solicitation's restriction or exclusion of potential bidders deprives potential bidders of the opportunity to participate in bidding competition, which is contrary to the principles of fairness and impartiality provided for in this Law, it should be prohibited.

2. Discriminatory treatment of potential bidders. Article 5 of this Law stipulates that bidding and bidding activities shall follow the principles of openness, fairness, impartiality and good faith. Article 18, paragraph 2, also provides that tenderers may not discriminate against potential bidders. In practice, there may be discriminatory treatment for potential bidders: preferential treatment of a certain product or equipment on the bidding price, and suppliers who are explicitly or implicitly selected under the same conditions. The discriminatory treatment of potential bidders by tenderers clearly violates the basic principles of the Law on Tendering and Bidding and the prohibitions of the law, and should therefore be prohibited.

3. It is mandatory for bidders to form a consortium to bid jointly. Article 31, paragraph 1, of this Law stipulates that two or more legal persons or other organizations may form a consortium to bid jointly as a bidder. Bidding for the formation of a consortium can concentrate the different advantages of each legal person or organization in the consortium and increase the likelihood of winning the bid. However, the bidding for the formation of the consortium must be voluntary of each bidder, and the bidders shall not be compelled to require the bidders to form a consortium to bid together in order to prevent the phenomenon of "pulling the lang match". Since the bidders who form the consortium shall be jointly and severally liable to the bidders for the winning project, there is a strong relationship of trust between the bidders who form the consortium. On the one hand, the compulsory formation of a consortium violates the principle of voluntariness of the parties, especially in the case of unfamiliarity between the parties; on the other hand, since the law requires that the bidders forming the consortium must have the corresponding ability to undertake the bidding project, the compulsory formation of the consortium will reduce the number of bidders, limit and reduce the competition between bidders, and achieve the purpose of promoting competition through bidding. Therefore, paragraph 3 of article 31 of this law stipulates that bidders may not force bidders to form a consortium to bid jointly.

4. Restrict competition between bidders. An important feature of the bidding system is to achieve the purpose of saving funds and improving the quality of procurement through full and effective competition. The practice of bidders controlling the number of bidders and artificially creating inequalities in competition among bidders seriously hampered the achievement of these objectives. In practice, in addition to forcing bidders to form a consortium to conduct bidding, bidders may also use the following means to restrict competition among bidders: dismember the bidding project and "distribute" among the various bidders; deliberately limit the scope of publication of bidding information so that potential bidders cannot know the bidding information; unreasonably raise the technical specifications or stipulate that only a small number of bidders can meet the requirements.

Second, the subject of legal liability provided for in this article is the tenderer, that is, the legal person or other organization that proposes the tender project in accordance with the provisions of this Law and conducts the tender.

Third, to constitute the legal liability provided for in this article, the perpetrator must subjectively have intention, and negligence cannot constitute the legal liability provided for in this article.

Fourth, it constitutes legal liability as provided for in this article and does not need to have illegal consequences. As long as the tenderer objectively has the above-mentioned illegal acts and subjectively has intention, it shall bear the legal liability provided for in this article.

Fifth, the form of legal liability provided for in this article

1. Order corrections. Where the administrative supervision department discovers that the bidder restricts or excludes potential bidders with unreasonable conditions, discriminates against potential bidders, and compulsorily requires bidders to form a consortium to bid jointly, or restricts competition between bidders, it shall order them to make corrections within a certain period of time, so that potential bidders have the opportunity to participate in bidding or can compete on an equal footing with other bidders.

2. Fines. Where the bidder commits the above-mentioned illegal acts, the relevant administrative supervision department may impose a fine on him. "May" a fine means that the relevant administrative supervision department may or may not impose a fine, depending on the circumstances of the law enforcement body. Where the amount of the fine is between 10,000 and 50,000 yuan, and the circumstances of the illegal conduct are serious, a heavier fine shall be imposed, and where the illegal circumstances are less serious, a smaller fine shall be imposed. In short, the result of the punishment should be commensurate with the violation.

Article 52 Where a tenderer for a project that must be tendered in accordance with law discloses to others the name, number, or other circumstances related to tendering and bidding that may affect fair competition, or leaks the bidding floor, a warning may be given and a fine of not less than 10,000 yuan but not more than 100,000 yuan may be imposed; the directly responsible supervisors and other directly responsible personnel of the unit shall be punished in accordance with law; and where a crime is constituted, criminal responsibility shall be pursued in accordance with law.

Where the acts listed in the preceding paragraph affect the outcome of the winning bid, the winning bid shall be invalid.

【Interpretation】The provisions of this article refer to the legal liability of the tenderer for its act of leaking circumstances that may affect fair competition and the act of leaking the bid base.

First, the illegal acts provided for in this article

1. Disclose to others the name, number of potential bidders who have obtained solicitation documents or other circumstances related to tendering and bidding that may affect fair competition. The confidentiality of the circumstances during the tendering process is a code of conduct that the tenderer must follow. According to article 22 of this Law, the names, quantities, etc. of potential bidders who have obtained the solicitation documents are confidential and the bidders shall not disclose them to others. In addition, any other circumstances that may affect fair competition, such as the composition of the evaluation committee, shall not be disclosed to others. If the tenderer commits the above-mentioned acts in violation of the provisions of this Law, it shall constitute an offence.

2. Leak the bottom of the standard. In the tendering process for some projects, the tenderer may have a bid floor. The practice of setting up a bidding base is a measure taken in view of the current development of China's construction market and national conditions, and is a concrete manifestation of the bidding system with Chinese characteristics. The bid base is confidential before the opening of bids and may not be disclosed by any person. In the process of practical operation, the bidder generally uses the bid base as a benchmark for measuring the bid price, and the bid that is too high or lower than the bid base will be rejected. Therefore, in order to win the bid as much as possible, bidders will often try their best to inquire about the bottom of the bid. There was once a case where when calculating the bid base, the bidder mistakenly wrote the bid base amount that was originally 780-8 million yuan as 780-800,000 yuan. Of the three tenders received, only one person had a bid price between $780,000 and $800,000, and the remaining two bidders were all much higher than $800,000. Subsequently, the tenderer requested that the tender be declared invalid on the grounds that the bid base was incorrect. We do not consider whether the tenderer can declare the tender invalid on the grounds that the bid is incorrect. Assuming that the bidding offers of each bidder are measured strictly according to the bid floor, it is crucial that the bidders limit their bids to the range of the bid floor. In this case, we can conclude from common sense that there is a possibility that the bid base formulated by the bidder may be leaked. It is precisely in consideration of the actual role of the bid base in the bidding and the possible adverse consequences of its disclosure that article 22, paragraph 2 of this law stipulates that if the bidder has a bid base, the bid base must be kept confidential. The act of leaking the bid base is of course an offence.

Second, the subject of legal liability provided for in this article may be either the bidder who must carry out the bidding project according to law, or the staff of the bidding unit, including the main responsible supervisor and other directly responsible personnel.

Third, constituting the legal liability provided for in this article, the perpetrator generally has subjective intent to violate the law and, in some cases, may also be negligent.

Fourth, it constitutes legal liability under this article and does not require actual damage consequences. As long as the perpetrator objectively committed the illegal act and has subjective fault, he shall bear legal responsibility.

Fifth, the form of legal liability provided for in this article

1. Warning. A warning is a written form of condemnation and admonition by an administrative subject against a violator. It is both educational and sanctioning in nature and is designed to alert offenders to declare that the perpetrator's conduct has been violated and to avoid its recurrence. Warnings generally apply to violations of the law that are minor or do not constitute actual harmful consequences. In addition, it can be both single and co-located. Theoretically, warnings belong to the punishment of reprimands, and their characteristics are: punishment is a spiritual punishment of individuals and organizations, and does not involve the substantive rights of individuals and organizations like other types of punishments; the purpose of applying for punishment is generally before other punishments, and the purpose of applying for punishment is to arouse the ideological vigilance of the offender, so that he will no longer violate the law in the future. The warning ruling must be announced to and sent to me, and a copy of the ruling must be handed over to the unit where the person being punished belongs and the police station where he or she is stationed. Verbal warnings are not administrative punishments, but merely criticism of the way education is conducted.

Specific to the legal liability provided for in this article, a warning refers to a written condemnation and admonition imposed by the relevant administrative supervision department on the bidder who has committed the above-mentioned illegal acts or the main responsible supervisor and other directly responsible personnel of the bidding unit.

2. May also be fined. According to the provisions of this article, where the perpetrator commits the above-mentioned illegal acts, the relevant administrative supervision departments may also impose a fine on him, and the amount of the fine shall be between 10,000 and 100,000 yuan.

3. Sanctions are given. The object of administrative sanctions is the supervisor and other directly responsible personnel directly responsible for the project unit. The types of administrative sanctions include warnings, demerits, major demerits, demotions, demotions, expulsions, and so forth. Relevant administrative supervision departments shall make different administrative punishment decisions based on the seriousness of the illegal conduct. Disciplinary punishment refers to punitive measures given by relevant social organizations to members who violate their internal rules and regulations. If the responsible person is a party member, the corresponding party disciplinary punishment (warning, expulsion from the party, etc.); the responsible person is a member of the relevant industry association, and the association can give him a sanction of lowering the qualification level according to the actual situation.

4. Pursue criminal responsibility. Where the perpetrator's unlawful conduct violates the criminal law and has a considerable degree of social harm and is punishable by criminal punishment, the judicial organs shall pursue criminal responsibility in accordance with law. Where a unit commits a crime, a fine shall be imposed on the unit, and the relevant supervisors and other directly responsible personnel shall be punished with corresponding criminal punishments, that is, a double punishment system shall be implemented.

Sixth, the winning bid is invalid

The premise of the invalidity of the winning bid must be that the tenderer's act of divulging the circumstances or information that should be kept confidential is sufficient to affect the outcome of the winning bid, such as the illegal conduct of the tenderer has caused the disappearance of the basis for equal competition between the bidders;

If the tenderer and the successful bidder have signed a written contract, the contract shall be invalid. According to the provisions of the Contract Law, if the contract is invalid, it shall be restored to the original state, and the party at fault shall compensate the other party for the losses suffered as a result, and if both parties are at fault, they shall bear corresponding responsibilities. Where losses are caused to others as a result of the above-mentioned illegal acts, compensation shall also be made for the losses of others. If the tenderer and the successful bidder have not signed a written contract, the notice of winning the bid issued by the tenderer shall be invalid, that is, it shall lose its legal binding force. The tenderer is no longer obliged to sign a written contract with the successful bidder, and the successful bidder loses the right to sign a written agreement with the tenderer.

Article 64 of this Law stipulates that if a project that must be tendered according to law violates the provisions of this Law and the winning bid is invalid, the winning bidder shall be re-determined from among the remaining bidders or re-tendered in accordance with this Law in accordance with the conditions for winning the bid stipulated in this Law.

Article 53 Where bidders collude with each other in bidding or collude with bidders to bid, the bidders seek to win the bid by paying bribes to the bidders or members of the bid evaluation committee, and the winning bid is invalid, and a fine of not less than 5/1000 to 10/1000 of the amount of the winning project shall be imposed, and a fine of not less than 5% but not more than 10% of the amount of the unit shall be imposed on the directly responsible supervisors and other directly responsible personnel of the unit; The bidding qualifications for projects that must be tendered according to law within one to two years shall be cancelled and announced until the business license is revoked by the administrative organ for industry and commerce; Whoever causes losses to others shall bear the liability for compensation in accordance with law.

【Interpretation】The provisions of this article stipulate the legal liability for collusion in bidding and for the illegal act of bribery in order to win the bid.

First, the illegal acts provided for in this article

1. Bidders collude with each other to bid. Collusion between bidders in bidding often occurs in practice, and collusion in bidding is manifested in the form of agreements between bidders and the rotation of winning bids. Collusion in bidding limits competition and renders tendering formalities. Therefore, article 32 of this Law stipulates that bidders may not collude with each other in bidding.

2. Bidders collude with bidders in bidding. Since most of the funds for projects that must be tendered come from state investment or loans from foreign governments or international organizations, in practice, in addition to the collusion of bidders to obtain contracts, in some cases, there is also the possibility of bidders and bidders colluding with each other to harm the national interest or the public interest. The collusion between bidders and bidders in bidding will damage the legal rights of other bidders on the one hand, and harm the national or social public interest on the other hand. Because of this, article 32 of this law clearly stipulates that bidders may not collude with bidders to harm the interests of the State, the societal public interest or the lawful rights and interests of others.

3. Bidders pay bribes to win the bid.

Second, the subjects of legal liability provided for in this article include bidders, bidders, as well as bidders, the principal responsible persons of bidders' units and other directly responsible personnel.

Third, to constitute legal liability under this article, the perpetrator must subjectively have the intention to commit the illegal act, that is, the perpetrator has a full knowledge or understanding of the purpose and nature of the act.

Fourth, it constitutes legal liability under this article and does not require actual damage consequences. As long as the perpetrator objectively has the illegal acts provided for in the foregoing and is subjectively at fault, the perpetrator shall bear legal responsibility.

Fifth, the form of legal liability provided for in this article

1. Fines. For acts of collusion in bidding, the relevant administrative supervision departments shall impose a fine of not less than 5/1000 to 10/1000 of the amount of the winning project on the bidders and bidders. The supervisors and other directly responsible personnel of the unit shall be fined not less than 5% but not more than 10% of the amount of the fine. The so-called "should" means that the relevant administrative supervision department only enjoys the discretion to decide the specific amount of the fine within the range of punishment prescribed by law, but does not have the discretion to decide whether to impose a fine, as long as the perpetrator has the above-mentioned illegal acts, the relevant administrative supervision department shall impose a fine on him.

2. Confiscation of illegal gains shall also be imposed. Confiscation of illegal gains is a punishment method carried out by an administrative entity that collects some or all of the illegal income, articles, or other illegally possessed property of the person who commits an administrative offense into the ownership of the state. Confiscation may be decided, depending on the gravity of the circumstances, in part or in its entirety. Confiscated articles, with the exception of those which shall be destroyed and archived for future reference, shall be handed over to the State Treasury or handed over to the statutory special authorities for disposal. Confiscation of unlawful gains is different from the confiscation of property in criminal law. Confiscation of property is a penalty in which part or all of the property owned by an individual criminal is forcibly and uncompromisedly returned to the state.

According to the provisions of this article, the premise that the relevant administrative supervision departments shall also confiscate the illegal gains against the offender is that the perpetrator has obtained illegal benefits as a result of committing the aforementioned illegal acts.

3. Disqualify the bidder from bidding. Disqualification from bidding is an act penalty, that is, a penalty measure that restricts or deprives the offender of a certain capacity or qualification, sometimes referred to as a capable penalty. In accordance with the provisions of this article, if the circumstances of a bidder's above-mentioned illegal conduct are serious, the relevant administrative supervision department shall revoke his bidding qualifications for participating in the bidding projects that must be tendered according to law within one to two years and make a public announcement. Whether the perpetrator's illegal conduct is a serious circumstance shall be judged from the aspects of the harmful consequences caused by the illegal act, the nature of the illegal act, and the means used to carry out the illegal act. Bidders who have been disqualified from bidding shall not be able to participate in the bidding of projects that must be tendered according to law within the time limit specified by the relevant administrative supervision department. In addition, it should be pointed out that the bidder's bidding qualifications are limited to projects that must be tendered according to law, and there should be no doubt whether the bidder can participate in the bidding of non-mandatory bidding projects. After the specified period of time has elapsed, the bidding qualifications of the disqualified bidders to participate in the compulsory bidding project shall be reinstated.

4. Revocation of business license. In the case of serious circumstances, the administrative organ for industry and commerce shall revoke the business license of the bidder who colluded in bidding. The so-called serious circumstances refer to the situation that the bidder's bidding qualification to participate in the compulsory bidding project within a certain period of time is not enough to achieve the purpose of the sanction. In this case, it is necessary to fundamentally abolish the perpetrator's capacity to act. Compared with the cancellation of the bidder's bidding qualification for a certain period of time, the penalty of revoking the business license is more severe, and it is the cancellation of the bidder's qualification to engage in business activities.

5. Pursue criminal responsibility. Where the circumstances of collusion in bidding seriously constitute a crime, the criminal responsibility of the offender shall be pursued in accordance with law. Where a unit commits a crime, it shall be fined, and the directly responsible supervisors and other directly responsible personnel shall be punished accordingly.

6. Compensation for Losses. Where collusion in bidding causes losses to others, it shall also bear the liability for compensation in accordance with law. The loss here is only a property loss and does not include moral damage. The so-called moral damage refers to the civil legal system in which a civil subject, because his personal rights have been unlawfully infringed, his personality and identity interests have been damaged or suffered mental suffering, requiring the infringer to provide relief and protection through property compensation and other methods. Since in bidding activities, the losses suffered by the victims due to collusive bidding are mostly property losses and do not include moral losses, the scope of damages should be limited to compensation for property damage.

In addition, the property loss referred to here includes both direct losses, such as the cost of re-bidding after the winning bid is invalid due to collusive bidding, as well as indirect losses, such as the loss of the opportunity to win the bid due to the collusion of certain bidders, the loss of the expected benefits of the project, etc. Collusion in bidding is not a breach of contract, but should be an act of infringement, so the scope of compensation for losses is not limited by the "rule of reasonable foresight".

Finally, in accordance with the provisions of this article, the object of damages shall be the tenderer who suffered damage as a result of collusive bidding, or a bidder other than a collusive bidder.

Sixth, the winning bid is invalid

If there is collusion between bidders, or between bidders and bidders, the winning bid shall be invalid. The so-called invalid bid means that the winning bid is not legally binding, and the invalidity is invalid from the beginning. Unlike the previous provisions on the invalidity of the winning bid, the invalidity of the winning bid provided for in this article does not have to be premised on the collusive act affecting the result of the winning bid, as long as the actor has committed a collusive act, regardless of whether the act affects the result of the winning bid, the winning bid is invalid. If the tenderer and the successful bidder have signed a written contract, the signed contract shall be invalid. According to the provisions of the Contract Law, if the contract is invalid, it shall be restored to its original state, and the party at fault shall compensate the other party for the losses suffered as a result, and if both parties are at fault, they shall bear corresponding responsibilities. Therefore, if it causes losses to others, it shall also compensate for the losses. If a written contract has not yet been signed, the notice of winning the bid issued by the bidder is invalid, the successful bidder loses the right to sign a written contract with the bidder, and the bidder no longer has the obligation to sign a written contract with the successful bidder.

Article 64 of this Law stipulates that if a project that must be tendered according to law violates the provisions of this Law and the winning bid is invalid, the winning bidder shall be re-determined from among the remaining bidders or re-tendered in accordance with this Law in accordance with the conditions for winning the bid stipulated in this Law.

Article 54 Where a bidder bids in the name of another person or fraudulently deceives the winning bid, the winning bid is invalid, causing losses to the bidder, he shall bear the liability for compensation in accordance with law; if a crime is constituted, criminal responsibility shall be pursued in accordance with law.

Where the bidders of a project that must be tendered in accordance with the law have the acts listed in the preceding paragraph that have not yet constituted a crime, they shall be fined not less than 5/1000 but not more than 10/100 of the amount of the project that wins the bid, and a fine of not less than 5% but not more than 10% of the amount of the unit's fine shall be imposed on the directly responsible supervisors and other directly responsible personnel of the unit; Until the business license is revoked by the administrative authority for industry and commerce.

【Interpretation】The provisions of this article are the legal liability of the bidder for the illegal act of defrauding the winning bid in a false manner.

First, the illegal acts provided for in this article

1. Bidders bid in the name of others. Bidders bidding in the name of others may be due to the following reasons: the bidder does not have the ability to undertake the bidding project; the bidder does not have the qualifications required by the state or required by the bidding documents to engage in the bidding project; the bidder has been revoked by the industrial and commercial organs for illegal acts, or the relevant administrative supervision department has been disqualified from engaging in relevant business within a certain period of time due to illegal acts. Article 26 of this Law stipulates that bidders shall have the ability to undertake bidding projects; if the relevant provisions of the State stipulate the qualifications of bidders or the bidding documents stipulate the qualifications of bidders, the bidders shall have the prescribed qualifications. It is illegal for a bidder to bid in the name of other capable or qualified bidders in the name of other capable or qualified bidders who do not have the ability to undertake the bidding project or does not have the qualifications that should be met.

2. Fraudulently obtaining the winning bid by other means. In addition to bidding in the name of others to defraud the winning bid, the bidder may also deceive and deceive the winning bid in other ways. Such as forging qualification certificates, business licenses, and falsifying the qualification review materials submitted. Article 33 of this Law stipulates that bidders may not bid on bids below the cost, nor may they bid in the name of others or otherwise deceive the winning bid. It is an offence to fraudulently obtain the winning bid in a fraudulent manner in violation of the provisions of this article. Of course, the "other ways" mentioned here are not limited to the cases listed above, but should include all acts of fraudulently obtaining the winning bid.

Second, the subject of legal liability provided for in this article is the bidder and the supervisor and other directly responsible personnel of the bidding unit.

Third, to constitute legal liability under this article, the perpetrator must have the intention to commit the illegal act. The deliberate manifestation of the actor as the actor's conduct has a clear purpose, that is, to win the bid.

Fourth, the form of legal liability provided for in this article

1. Compensation for losses. If the bidder's fraudulent behavior causes losses to the bidder, he shall bear the liability for compensation in accordance with law. In general, the liability of the bidder should be limited to property damage and not include moral damage.

In addition, the scope of compensation for bidders includes both direct and indirect losses. The cost of re-bidding after the former is invalid due to fraudulent bidding. The latter is such as the loss of the expected income of the project. Since the act of defrauding the winning bid is an act of infringement, the scope of damages arising from the act is not limited by the "Reasonable Foresight Rule". According to the provisions of this article, the object of damages shall be the tenderer who has suffered damages as a result of the bidder's fraudulent acquisition of the winning bid.

2. Pursue criminal responsibility in accordance with law. Where the circumstances of the bidder's act of fraudulently obtaining the winning bid constitute a serious crime, the judicial organ shall pursue the criminal liability of the bidder in accordance with law. Where a unit constitutes a crime, it shall be fined, and the directly responsible supervisors and other directly responsible personnel shall be punished accordingly.

3. Fines. This includes fines for bidders and fines for supervisors and other directly responsible personnel who are directly responsible for bidding units. According to the provisions of this article, if a bidder of a project that must be tendered according to law fraudulently obtains the winning bid, the relevant administrative supervision department shall impose a fine of not less than 5 per cent but not more than 10 per cent of the amount of the project winning the bid, and the supervisor and other directly responsible personnel of the winning unit shall be fined not less than 5 per cent but not more than 10 per cent of the amount of the unit fine.

4. Confiscation of illegal gains shall also be imposed. Where bidders who are required to conduct bidding projects in accordance with the law win the bid through fraud and deception and seek illegal benefits from it, in addition to fines, the relevant administrative supervision departments shall also confiscate the illegal gains.

5. Disqualification from bidding. Where the circumstances of the bidders of a project that must be tendered according to law are serious, the relevant administrative supervision department shall revoke his bidding qualifications for participating in the projects that must be tendered according to law within one to three years and make a public announcement. Since the penalty for disqualifying the bidders from participating in compulsory bidding projects within a certain period of time is relatively serious, caution should be exercised when making such penalty decisions. According to the provisions of this article, the premise of canceling the bidding qualifications of illegal bidders to participate in bidding projects that must be carried out according to law is that the bidder's fraudulent bid winning bid is "serious". The so-called serious circumstances refer to the serious consequences caused by the act of defrauding the winning bid, the bidder's repeated deception of the winning bid, and the means of defrauding the winning bid. Bidders who have been disqualified from bidding shall not participate in the bidding of projects that must be tendered according to law within the specified period of time.

In addition, the disqualification of bidding can only be discussed if the illegal bidder actually has the qualification to bid. If the perpetrator fraudulently claims to have bid qualifications in order to defraud the winning bid precisely because he is not qualified to bid, the relevant administrative supervision department can only adopt other punishment methods to achieve the purpose of punishment, and there is no cancellation of bidding qualifications.

6. Revocation of business license. Where the circumstances of the illegal act of a bidder who must be subject to bidding for a project that must be tendered according to law cheat and fraudulently obtain the winning bid are serious, and the cancellation of his bidding qualifications for participating in the compulsory bidding project within a certain period of time is not sufficient to achieve the purpose of sanctions, the administrative organ for industry and commerce shall revoke the bidder's business license. Bidders whose business licenses have been revoked may not engage in any business operations. The premise of revoking the business license is that the bidder has a business license, and if the actor who fraudulently wins the bid does not have a business license at all, then there is no revocation of the business license.

Fifth, the winning bid is invalid

If a bidder fraudulently obtains the winning bid by deception, whether or not the act of defrauding the winning bid affects the outcome of the winning bid, the bid shall be invalid. The so-called invalid bid means that the winning bid is not legally binding, and the invalidity is invalid from the beginning. If the tenderer and the successful bidder have signed a written contract, the signed contract shall be invalid. According to the Contract Law, if the contract is invalid, it shall be restored to its original state, and the at fault bidder shall compensate the other party for the losses suffered as a result. If the contract has not yet been signed, the notice of winning the bid issued by the bidder is invalid, the bidder no longer has the obligation to sign a contract with the bidder, and the successful bidder loses the right to sign a contract with the bidder. Article 64 of this Law stipulates that if a project that must be tendered according to law violates the provisions of this Law and the winning bid is invalid, the winning bidder shall be re-determined from among the remaining bidders or re-tendered in accordance with this Law in accordance with the conditions for winning the bid stipulated in this Law.

Article 55 Where a bidder for a project that must be tendered in accordance with the law violates the provisions of this Law and negotiates with the bidder on the substantive content such as the bidding price and the bidding plan, a warning shall be given, and the directly responsible supervisors and other directly responsible personnel of the unit shall be punished in accordance with law.

Where the acts listed in the preceding paragraph affect the outcome of the winning bid, the winning bid shall be invalid.

【Interpretation】The provisions of this article are the legal responsibilities of the bidder for its illegal negotiation behavior.

First, the illegal acts provided for in this article

According to the provisions of the Contract Law and the theory of contract formation, bidding is a competitive contracting procedure, and the purpose of bidding is to select the best contract counterparty from a large number of bidders. In order to ensure that this choice is fair and equitable, this Law provides that the tenderer must conclude a contract with the successful bidder in accordance with the solicitation documents and the successful bidding documents and shall not negotiate the relevant substantive content. In this way, the process of concluding the contract between the parties and the content of the relevant contract can be placed under the supervision of the public, ensuring that the best bidders can obtain the contract, thus achieving the purpose of preventing fraud.

On the contrary, if the bidders and bidders are allowed to negotiate and negotiate on the substantive contents of the bidding price and bidding plan before the successful bidder is determined, it will run counter to the "three justices" principle and will inevitably make the relevant bidding procedures meaningless. Therefore, article 43 of this law stipulates that before determining the successful bidder, the bidder shall not negotiate with the bidder on the substantive content of the bidding price, bidding plan and so on. Failure to do so constitutes an offence.

Second, from the text used in this article, it is understood that the subject of legal liability provided for in this article is the tenderer who must carry out the bidding project according to law, that is, the legal person or other organization that proposes the bidding project for bidding, and the directly responsible manager or other directly responsible personnel of the bidding unit. Since the act of negotiating the substantive contents of the bidding quotation, the bidding plan and other substantive contents before the bid is won cannot be carried out unilaterally by the bidder, the responsible person should include the bidder.

Third, to constitute legal liability under this article, the perpetrator must have the intention to commit the illegal act. The intention referred to here means that the actor has sufficient knowledge and understanding of the purpose of his act, rather than that the actor knows that his act of negotiating the substance in question is illegal. Even if the perpetrator is unaware that it is unlawful to negotiate on the substance in question, it is considered at fault as long as the perpetrator has a full understanding and awareness of the purpose of his conduct at the time of the negotiation.

Fourth, the form of legal liability provided for in this article

1. Warning. Where a bidder violates the provisions of this article and negotiates with the bidder on the substantive content of the bidding quotation, bidding plan, etc., the relevant administrative supervision department shall give a warning. Specifically for the purposes of this article, a warning refers to a written condemnation and admonition by the relevant administrative supervision department against a person who has committed the above-mentioned violation.

2. Sanctions are given. According to the provisions of this article, the relevant administrative supervision departments shall give administrative sanctions to the directly responsible supervisors and other directly responsible personnel of the unit in accordance with law.

Disciplinary action is a punitive measure taken against internal disciplinary staff in accordance with the articles of association and resolutions of the organization. According to the provisions of this article, in the case that the supervisors and other directly responsible personnel of the project unit are not state civil servants, they shall be disciplined in accordance with the internal regulations of the project unit. If the supervisor of the project unit and other directly responsible personnel are party members, party disciplinary sanctions are given.

Fifth, the winning bid is invalid

According to the provisions of this article, the premise of the invalidity of the winning bid must be the illegal negotiation that affects the result of the winning bid. The so-called impact on the winning bid results refers to the situation in which unqualified bidders win the bid, or the qualified bidder fails to win the bid. The contract signed is invalid if the tenderer and the bidder have already signed a contract. According to the Provisions of the Contract Law, if the contract is invalid, it shall be restored to its original state, and the party at fault shall compensate the other party for the losses suffered as a result, and if both parties are at fault, they shall bear corresponding responsibilities. If the tenderer and the successful bidder do not sign a contract, the notice of winning the bid issued by the bidder is invalid, the bidder no longer has the obligation to sign a contract with the successful bidder, and the successful bidder loses the right to sign a contract with the bidder.

Article 64 of this Law stipulates that if a project that must be tendered according to law violates the provisions of this Law and the winning bid is invalid, the winning bidder shall be re-determined from among the remaining bidders or re-tendered in accordance with this Law in accordance with the conditions for winning the bid stipulated in this Law.

Article 56 Where a member of the bid evaluation committee accepts property or other benefits from a bidder, if the members of the bid evaluation committee or the relevant staff participating in the bid appraisal disclose to others the evaluation and comparison of the bidding documents, the recommendation of the successful candidate, and other circumstances related to the bid evaluation, they shall be given a warning, confiscate the property they have received, and may also impose a fine of not less than 3,000 yuan but not more than 50,000 yuan, and the members of the bid evaluation committee who have committed the illegal acts listed shall be disqualified from serving as members of the bid evaluation committee. They shall no longer participate in the evaluation of bids for any projects that must be tendered in accordance with law; if a crime is constituted, criminal responsibility shall be pursued in accordance with law.

【Interpretation】The provisions of this article are the legal responsibilities that the members of the bid evaluation committee and the relevant staff participating in the bid evaluation shall bear for their illegal acts.

First, the illegal acts provided for in this article

1. The members of the bid evaluation committee accept gifts or other benefits from the bidders. The Bid Evaluation Committee is the working body responsible for the bid evaluation work. In order to ensure the fair conduct of the bid evaluation work, the bid evaluation committee must be in a relatively detached position, therefore, this law stipulates that those who have an interest in the bidder are not allowed to enter the bid evaluation committee of the relevant project, and those who have already entered should be replaced. In the bid evaluation work, the bid evaluation committee shall perform its duties objectively and impartially, abide by professional ethics, and bear personal responsibility for the appraisal opinions put forward. In practice, in order to win the bid, some bidders always try their best to approach and co-opt the members of the bid evaluation committee, and buy off the bid evaluation committee members by giving gifts, providing free travel abroad, and even paying bribes. In this regard, article 44, paragraph 2, of this Law clearly stipulates that members of the bid evaluation committee shall not have private contact with bidders and shall not accept any property or other benefits from bidders.

2. The members of the bid evaluation committee or the relevant staff participating in the bid evaluation disclose to others the evaluation and comparison of the bidding documents, the recommendation of the successful candidate, and other circumstances related to the evaluation of the bid. In order to ensure that the bid evaluation work is carried out objectively and fairly, article 38 of this law stipulates that the bidder shall take the necessary measures to ensure that the bid evaluation is carried out under strict confidentiality. No unit or individual may illegally interfere with or influence the process and results of bid evaluation. In order to prevent the members of the bid evaluation committee from revealing the information about the evaluation of bids, a number of measures have been taken in practice, such as the adoption of isolation measures in accommodation and communication. In view of the actual situation of revealing some information related to bid evaluation that should be kept confidential, article 44, paragraph 3 of this law stipulates that members of the bid evaluation committee and relevant staff participating in the bid evaluation shall not disclose the evaluation and comparison of the bidding documents, the recommendation of the winning candidate, and other circumstances related to the evaluation of the bid. Violation of these Provisions constitutes an offence.

1. Warning. Where members of the bid evaluation committee or relevant staff participating in the bid evaluation have the above-mentioned illegal acts, the relevant administrative supervision department shall give a warning, that is, give a reprimand and condemnation in writing.

2. Confiscation of accepted property. The property accepted by the members of the bid evaluation committee shall be confiscated and returned to the ownership of the State.

3. Fines. Where a member of the bid evaluation committee or a relevant staff member participating in the bid evaluation commits the above-mentioned illegal acts, the relevant administrative supervision department may, on the basis of specific circumstances, impose a fine on him. The amount of the fine shall be between 3,000 and 50,000 yuan, and shall be determined by the relevant administrative supervision department according to the severity of the illegal act. If the punishment measures such as warning and confiscation of gifted property are sufficient to achieve the purpose of sanctioning illegal acts, the fine may not be imposed.

4. Disqualification. For members of the bid evaluation committee who have committed the above-mentioned illegal acts, the relevant administrative supervision department shall disqualify them from serving as members of the bid evaluation committee. A person who has been disqualified from serving as a member of the bid evaluation committee shall be removed from the expert pool established by the state expert pool or the bidding agency, and shall no longer engage in the evaluation of bids for any project that must be tendered according to law, nor shall the bidder hire him or her to serve as a bid evaluation committee.

5. Pursue criminal responsibility in accordance with law. Where the illegal conduct of a member of the bid evaluation committee or a relevant person participating in the bid evaluation work is serious and constitutes a crime, the judicial organ shall pursue criminal responsibility in accordance with the relevant criminal law provisions.

Article 57 Where a bidder determines the winning bidder in addition to the successful candidate recommended by the bid evaluation committee in accordance with law, and the project that must be tendered according to law determines the successful bidder on its own after all bids have been rejected by the bid evaluation committee, the winning bid is invalid, ordered to make corrections, and may be fined not less than 5/1000 of the amount of the winning project; the supervisors and other directly responsible personnel of the unit shall be punished in accordance with law.

【Interpretation】The provisions of this article are the legal responsibility of the tenderer for its illegal act of not determining the successful bidder according to the requirements.

First, the illegal acts provided for in this article

1. The bidder shall determine the successful bidder in addition to the successful candidate recommended by the bid evaluation committee in accordance with law. In accordance with the provisions of this Law, the ultimate purpose of the bid evaluation work of the bid evaluation committee is to recommend qualified successful candidates to the bidders or to directly determine the successful bidders according to the authorization of the bidders, and the bidders can only select the winning bidders among the winning candidates recommended by the bid evaluation committee. The purpose of this provision of the law is to prevent the tenderer from being able to guarantee the fairness of the evaluation result due to human feelings, interests and other reasons. If the tenderer determines the successful bidder in addition to the successful candidate recommended by the bid evaluation committee, it will make the work of the bid evaluation committee meaningless and it will be difficult to ensure the fairness of the results of the bid. In view of this, article 40 of this Law provides that the bidder shall determine the successful bidder on the basis of a written bid evaluation report submitted by the bid evaluation committee and the recommended successful candidate. If a bidder violates the provisions of this Law and determines the successful bidder in addition to the successful candidate recommended by the bid evaluation committee, it shall constitute an offence.

2. Determine the successful bidder after all bids have been rejected by the bid evaluation committee. Article 42 of this Law stipulates that if the bid evaluation committee finds that all bids do not meet the requirements of the solicitation documents after evaluation, it may reject all bids. The rejection of all bids means that there are no qualified bidders, indicating that the bid failed. In order to select the best contract counterparty and achieve the purpose of compulsory bidding prescribed by law, the bidder shall re-bid in accordance with the provisions of this Law, and shall not determine the successful bidder after all bids have been rejected by the bid evaluation committee for the sake of simplicity and cost saving. Otherwise, the bidding will be a formality, which will not realize the value of the bidding system, and will also violate the requirements of the law for compulsory bidding.

Second, the subject of legal liability provided for in this article is the bidder of the project that must be tendered according to law, the directly responsible supervisor of the bidding unit and other directly responsible personnel.

Third, to constitute legal liability under this article, the perpetrator should subjectively have the intention to engage in illegal conduct.

Fourth, the form of legal liability provided for in this article

1. Order corrections. For bidders who have the above-mentioned illegal acts, the relevant administrative supervision departments shall order them to make corrections within a certain period of time, determine the successful bidder among the candidates recommended by the bid evaluation committee, and re-bid the projects that must be tendered according to law in accordance with the provisions of this Law if all bidders are denied by the bid evaluation committee.

2. Fines. For bidders who have committed the above-mentioned illegal acts, the relevant administrative supervision departments may impose a fine of not less than 5/1000 and not more than 10/1000 of the amount of the winning project. Where the bidder corrects the error in a timely manner, the relevant administrative supervision department may not impose a fine.

3. Sanctions are given. Where the directly responsible supervisors and other directly responsible personnel of the bidding unit are State functionaries, the relevant competent organs shall give them administrative sanctions. Depending on the severity of the circumstances, different penalties may be given, such as demerit, major demerit, warning, demotion, demotion, expulsion, etc. Where the directly responsible supervisors and other directly responsible personnel of the bidding unit are not state functionaries, the relevant administrative competent organ shall order the bidding unit to give disciplinary punishment in accordance with internal rules.

Fifth, the winning bid is invalid

In accordance with the provisions of this article, if the bidder determines the successful bidder other than the successful candidate recommended by the bid evaluation committee in accordance with the law, or determines the successful bidder on its own after all bids have been rejected by the bid evaluation committee, the winning bid shall be invalid. In the case where the contract has already been signed, the invalidity of the winning bid is actually the invalidity of the contract, which should be restored in accordance with the Contract Law, and the party at fault should also compensate the other party for the losses suffered. In the case that the contract has not yet been signed, the notice of winning the bid issued by the bidder is invalid, the bidder is no longer obliged to sign the contract with the successful bidder, and the successful bidder loses the right to sign the contract with the bidder.

Article 64 of this Law stipulates that if a project that must be tendered according to law violates the provisions of this Law and the winning bid is invalid, the winning bidder shall be re-determined from among the remaining bidders or re-tendered in accordance with this Law in accordance with the conditions for winning the bid stipulated in this Law.

Article 58 Where the successful bidder transfers the winning project to another person, dismembers the winning project and then separately transfers it to another person, and subcontracts part of the main body or key work of the winning project to another person in violation of the provisions of this Law, or if the subcontractor subcontracts again, the transfer or subcontracting shall be invalid and a fine of not less than 5/1000 but not more than 10/1000 of the amount of the transferred or subcontracted project shall be imposed; where there are illegal gains, the illegal gains shall be confiscated; the business suspension and rectification may be ordered; and if the circumstances are serious, the administrative organ for industry and commerce shall revoke the business license.

【Interpretation】This article stipulates the legal responsibility that the successful bidder shall bear for illegally transferring the winning project, illegally subcontracting the winning project to another person, or subcontracting the subcontractor again.

First, the illegal acts provided for in this article

1. The successful bidder will transfer the winning project to another person. According to the provisions of this Law, the successful bidder's bid must meet one of the following conditions: (1) it can meet the comprehensive evaluation criteria specified in the solicitation documents to the greatest extent possible; The successful bidder selected accordingly can achieve the purpose of saving funds on the one hand, and ensure the quality of the completion of the bidding project on the other hand. If the successful bidder acquires the winning project and then transfers it to another person, it will make the bidding process meaningless. In addition, the contract signed between the bidder and the successful bidder has a strong nature of trust, and the successful bidder should personally perform it, otherwise it constitutes a breach of contract. Finally, for every transfer of the winning project, the actual funds used for the project will be reduced once, which will seriously affect the quality of the tendered project. In view of this, article 48 of this Law stipulates that the tenderer may not transfer the winning project to others. If the successful bidder violates the regulations and transfers the winning project to another person, it constitutes an illegal act.

2. Dismember the winning project and transfer it to others separately. In addition to transferring the winning project package to others, the winning bidder may also dismember the winning project in the form of "retail" and transfer it to others separately, so as to achieve the purpose of profiting from it. Such an act would also render the tender meaningless. Therefore, article 48 of this Law stipulates that the successful bidder shall not separately transfer the winning project to others after dismemberment.

3. Subcontracting part of the main body and key work of the winning project to others in violation of the provisions of this Law. Since the quality of the bidding project depends to a considerable extent on the completion of the main body of the project and the key work, the reason why the bidder selects a bidder as the winning bidder is that in many cases the ability of the successful bidder to complete the main body or key work of the project has been affirmed by the evaluation committee and the bidder. If the successful bidder entrusts the main body and key work of the bidding project to others to complete, it will make the bidding meaningless and it will be difficult to ensure the quality of the project completion. If the successful bidder exceeds the scope permitted by law, it is illegal to subcontract the main body and key work of the winning project to others.

4. The subcontractor subcontracts again. In some cases, it is impractical and unnecessary to require the successful bidder to complete all the work of the tendered project. Sometimes the reason why the bidder selects a bidder as the winning bidder is because the bidder's ability to complete the main body or key work of the bidding project has been affirmed by the bid evaluation committee, and it is not necessarily superior in some non-main and non-key aspects. Therefore, this Law allows the successful bidder to subcontract certain non-main and non-critical work to a person with the corresponding qualifications and conditions on the premise of obtaining the consent of the bidder. Allowing the successful bidder to subcontract the non-main and non-critical work of the winning project to a person with qualification conditions can give full play to the advantages of multiple parties and better complete the winning project. However, the subcontractor should not subcontract the subcontracted project, otherwise it will cause the project funds to be exploited layer by layer, and ultimately affect the quality of the project. Therefore, article 48 of this law stipulates that the successful bidder, with the consent of the bidder, may subcontract part of the non-main and non-key work to a person with corresponding qualifications. However, the person who obtains the subcontract may not subcontract again.

In recent years, many quality problems in the field of infrastructure construction have been caused by layers of transfer or subcontracting, which have caused serious harm to the interests of the state and the safety of people's lives and property. Therefore, the transfer and subcontracting of layers must be strictly prohibited.

Second, the subject of legal liability provided for in this article is the successful bidder and the subcontractor who has obtained the subcontracted project in accordance with the law.

Third, to constitute legal liability under this article, the perpetrator must subjectively have the intention to commit the illegal act, that is, have a full knowledge or understanding of the act of transferring or subcontracting.

Fourth, the legal liability provided for in this article is constituted, and there is no need for the actual damage caused by the perpetrator's illegal act, as long as the actor has committed the aforementioned illegal act and is subjectively at fault, he shall bear legal responsibility.

Fifth, the form of legal liability provided for in this article

1. Fines. Where the successful bidder or subcontractor commits the above-mentioned illegal acts, the relevant administrative supervision department shall impose a fine on them. The range of fines is between 5/1000 and 10/1000 of the amount of the transferred or subcontracted project, and the specific amount is to be decided by the relevant administrative supervision department on the basis of the seriousness of the perpetrator's illegal conduct.

2. Confiscation of illegal gains. Where the perpetrator has unlawful gains due to transfer or subcontracting, the unlawful gains shall be confiscated concurrently.

3. Order the suspension of business for rectification. Where the successful bidder or subcontractor commits the above-mentioned illegal acts, the relevant administrative supervision department may order him to suspend his business and rectify it within a certain period of time. If the perpetrator corrects the violation within the specified period of time, he may resume business. If the purpose of sanctioning illegal acts can be achieved through fines and confiscation of illegal gains, there is no need to order the suspension of business for rectification.

4. Revocation of business license. Where the circumstances of the successful bidder engaging in the above-mentioned illegal acts are serious, the business license shall be revoked by the administrative organ for industry and commerce. The so-called serious circumstances refer to situations where the perpetrator's conduct has caused relatively serious consequences, the perpetrator has repeatedly committed illegal acts, or the perpetrator's behavior shows that the perpetrator has not corrected the sincerity and possibility of correcting the error, and the application of the above-mentioned legal liability is not sufficient to achieve the purpose of sanctions. Persons whose business licenses have been revoked may no longer engage in relevant business activities.

Sixth, assignments and subcontracting are invalid

If the successful bidder illegally transfers the winning project to another person, or the subcontractor subcontracts again, the transfer or subcontracting act shall be invalid. The invalidity is ineffectual, i.e. from the time of assignment or subcontracting. The property acquired by the actor as a result of the act shall be returned to the other party. The party at fault shall also compensate the other party for the losses suffered as a result. Specifically to the provisions of this article, the successful bidder and the subcontractor shall also compensate the tenderer for the losses suffered as a result. The scope of compensation shall include indirect losses in addition to direct losses.

Article 59 Where the bidder and the successful bidder do not conclude a contract in accordance with the bidding documents and the bidding documents of the successful bidder, or if the bidder or the successful bidder enters into an agreement that deviates from the substantive content of the contract, it shall be ordered to make corrections; a fine of not less than 5/1000 and not more than 10/1000 of the amount of the winning project may be imposed.

【Interpretation】The provisions of this article are the legal liabilities that should be borne for not signing contracts in accordance with the bidding documents and bidding documents and entering into agreements that violate the substantive content of the contract.

First, the illegal acts provided for in this article

1. The tenderer and the successful bidder shall not conclude the contract in accordance with the tender documents and the tender documents of the successful bidder. According to the provisions of the Contract Law, the tender documents of the tenderer are invitations to make an offer, the tender documents of the tenderers are an offer, and the notice of winning the bid issued by the tenderer is an undertaking, that is, an expression of intent to agree to the offer. Article 25 of the Contract Law stipulates that a contract is formed when an undertaking enters into force. Accordingly, the contract between the parties has been established since the tenderer issued the notice of winning the bid to the successful bidder. The reason why this Law requires the tenderer and the successful bidder to sign a written contract after the contract is formed is to take into account the importance and complexity of the tendered project and the requirements for the form of the contract and the effective time of the contract: when the written contract is signed, the contract becomes effective. A written contract helps to further clarify the rights and obligations of the parties. The failure of the tenderer and the successful bidder to conclude a contract in accordance with the solicitation documents and the tender documents violates the mandatory provisions of the law on the one hand, and on the other hand renders meaningless a series of activities carried out for the purpose of tendering. Therefore, article 46 of this Law stipulates that the tenderer and the successful bidder shall conclude a written contract in accordance with the tender documents and the successful bidding documents within thirty days from the date of issuance of the notice of winning the bid.

2. The tenderer and the successful bidder shall conclude an agreement to deviate from the substantive content of the contract. In addition to the above-mentioned methods, the tenderer and the successful bidder may also achieve the purpose of circumventing the tender through more covert methods, such as the tenderer and the successful bidder may conclude a contract in the form of the solicitation documents and the successful bidding documents, but enter into an agreement outside the contract that deviates from the substantive content of the contract. The substantive content of the so-called contract refers to the main terms of the contract such as the bidder's quotation, bidding plan, technical specifications, etc. The result is a form for the contract concluded by the parties on the basis of the solicitation documents and the successful bidding documents. In this regard, article 46 of this Law clearly stipulates that the tenderer and the successful bidder may not enter into other agreements that deviate from the substance of the contract.

Second, the subjects of legal liability provided for in this article are the bidders and bidders.

Third, to constitute legal liability under this article, the perpetrator must have the intention to commit an illegal act. This is manifested in the fact that the tenderer and the successful bidder have the clear purpose of signing a contract outside the tender documents and the successful bidding documents in order to avoid the tender, or to sign an agreement that deviates from the substantive content of the contract.

Fourth, the form of legal liability provided for in this article

1. Order corrections. For tenderers and successful bidders who have committed illegal acts as provided for in this article, the relevant administrative supervision departments shall order them to make corrections within a certain period of time, that is, to conclude contracts in strict accordance with the bidding documents and the bidding documents of the successful bidder. Where an agreement deviating from the substantive content of the contract is concluded in addition to the contract already signed, the signed agreement shall be annulled and the parties shall exercise their rights and perform their obligations in strict accordance with the contract signed on the basis of the tender documents and the bidding documents of the successful bidder.

2. Fines. For bidders and successful bidders who have committed illegal acts provided for in this article, the relevant administrative supervision departments may impose a fine of not less than 5/1000 and not more than 10/1000 of the amount of the winning project. Whether or not to impose a fine shall be determined by the relevant administrative supervision department on a case-by-case basis. No fine may be imposed in the following circumstances: where the perpetrator takes the initiative to correct the illegal act and eliminate the adverse consequences caused therefore;

Article 60 If the successful bidder fails to perform the contract concluded with the bidder, the performance bond shall not be refunded, and if the loss caused to the bidder exceeds the amount of the performance bond, it shall also compensate for the excess; if the performance bond is not submitted, it shall bear the liability for compensation for the loss of the tenderer.

If the successful bidder fails to perform its obligations in accordance with the contract concluded with the bidder, and the circumstances are serious, its bidding qualifications for participating in the projects that must be tendered according to law within two to five years shall be cancelled and announced, until the business license is revoked by the administrative organ for industry and commerce.

If the contract cannot be performed due to force majeure, the provisions of the preceding two paragraphs shall not apply.

【Interpretation】The provisions of this article stipulate the legal liability of the successful bidder for its breach of contract.

First, the illegal acts provided for in this article are the breaches of contract by the successful bidder. The premise constituting a breach of contract under this article is that the tenderer and the successful bidder have signed a legally valid contract, and if the contract between the parties is not established or does not take effect, there is no breach of contract.

The default of the successful bidder can be roughly divided into the following categories:

1. Non-fulfillment. The so-called non-performance refers to the act of not performing the contract when it reaches the performance period. Non-performance can be divided into refusal to perform and failure to perform. The former refers to the situation in which the successful bidder is able to actually perform but deliberately fails to perform without a legitimate reason; the latter refers to the situation in which the contract reaches the performance period and the successful bidder cannot actually perform. For the failure to perform due to the subjective fault of the successful bidder, the successful bidder shall still bear legal responsibility.

2. Incomplete performance, that is, the successful bidder has not fully performed its obligations in accordance with the contract, which is also called improper performance or incorrect performance. Incomplete performance is divided into two situations: one is that the payment is defective, as far as the project is concerned, it means that there are quality problems in the engineering project completed by the successful bidder; the other is the harmful payment, as far as the bidding project is concerned, it means that the bidding project completed by the winning bidder not only does not meet the quality requirements, but also causes personal and property damage to others because of the quality problem.

3. Delay in performance, that is, the successful bidder is able to perform but does not perform the contractual obligations in accordance with the statutory or agreed time, such as the successful bidder cannot complete the bidding project on time.

4. The act of breaking the contract, that is, the successful bidder unilaterally tears up the contract without any legitimate reason or legal basis.

Second, the subject of the legal liability provided for in this article is the successful bidder who has signed a contract with the bidder.

Third, according to the provisions of the Contract Law, the legal liability provided for in this article is constituted, and the actor does not need to be subjectively at fault, and as long as the actor commits the breach of contract, it shall be responsible for the breach.

Fourth, the form of legal liability provided for in this article

1. The performance bond will not be refunded. In order to urge the successful bidder to perform the contract, paragraph 2 of article 46 of this law stipulates that if the bidding documents require the successful bidder to submit a performance bond, the successful bidder shall submit it. If the successful bidder who paid the performance bond fails to perform the contract, the performance bond paid shall not be refunded, regardless of whether the successful bidder's breach of contract has caused damage to the tenderer.

In addition, the non-return of the performance bond is premised on the successful bidder having submitted the performance bond, since the performance bond should not be submitted under any circumstances. According to the provisions of this Law, the successful bidder shall only submit a performance bond if the bidder requests the successful bidder to submit it. Conversely, no submission is required.

2. Compensation for losses. If the successful bidder's breach of contract causes losses to the bidder, the successful bidder shall bear the responsibility for damages. According to the provisions of the Contract Law, the scope of compensation for the successful bidder includes the direct and indirect losses suffered by the bidder, but shall not exceed the losses that the parties foresaw or should have foreseen at the time of the conclusion of the contract. The performance bond paid shall be set off as part of the damages. If the amount of the performance bond exceeds the loss caused by the breach of contract, the successful bidder shall not compensate for the loss. On the contrary, if the amount of the performance bond is lower than the loss caused by the breach, the successful bidder should also compensate for the insufficient part. In addition, the liability of the successful bidder should be limited to damage to property and not to moral damage.

3. Disqualification from bidding. If the successful bidder fails to perform its obligations in accordance with the contract concluded with the bidder, and the circumstances are serious, the relevant administrative supervision department shall cancel its bidding qualifications for participating in the projects that must be tendered according to law within two to five years and make a public announcement. The so-called serious circumstances refer to the situation that the successful bidder's breach of contract has caused significant losses.

4. Revocation of business license. If the bidding qualifications of the successful bidder to participate in the projects that must be tendered within two to five years are cancelled and the bidding qualifications are not enough to achieve the purpose of sanctions, the administrative organ for industry and commerce shall revoke the business license of the successful bidder. The successful bidder whose business license has been revoked shall no longer engage in relevant business.

Fifth, the grounds for exemption

According to the provisions of this article, if the successful bidder is unable to perform the contract due to force majeure, he may be exempted from liability. The so-called force majeure refers to situations that cannot be foreseen, avoided and insurmountable. This includes natural disasters and certain social phenomena. The former such as volcanic eruptions, earthquakes, typhoons, hail and floods, etc.; the latter such as wars. Because the purpose of the legal liability system is to protect the legitimate rights and interests of citizens and legal persons, remedy the illegal damage they have suffered, educate and restrain people's behavior, and prevent the occurrence of illegal acts. If people are held liable for damage caused by events that they subjectively cannot foresee and cannot avoid or overcome, this will not only fail to achieve the purpose of legal responsibility, but also unfair to those who bear responsibility. In this regard, the Contract Law also has clear provisions: if the contract cannot be performed due to force majeure, the liability shall be partially or completely exempted according to the impact of force majeure, unless otherwise provided by law.

However, if force majeure occurs during the period of delay in the performance of the obligation, the debtor cannot refuse to bear civil liability for breach of the debt on the grounds of force majeure.

According to the Contract Law, if the successful bidder is unable to perform the contract due to force majeure, it shall promptly notify the tenderer to mitigate the losses that may be caused to the tenderer, and shall provide proof of the occurrence of force majeure within a reasonable period of time.

Article 61: The administrative punishments provided for in this Chapter are to be decided by the relevant administrative supervision departments provided for by the State Council. The exceptions already provided for in this Law for organs that impose administrative penalties are provided for.

【Interpretation】The provisions of this article refer to the subject of administrative punishment.

First, the subject of the administrative punishment provided for in this Law

According to the provisions of this article, the subject of administrative punishment is the relevant administrative supervision department. The law does not clearly stipulate the subject of administrative punishment, but authorizes the State Council to make provisions, so this article, like the provisions of article 7 of this law on the division of powers of administrative supervision departments, needs to be formulated by the State Council according to actual conditions.

Second, the subject of administrative punishment has jurisdiction over administrative punishment cases

The jurisdiction of administrative punishment cases solves the problem of which department, which level, and which region of the administrative supervision body is responsible for handling after the occurrence of administrative violations. According to the provisions of this Law and the Administrative Punishment Law, the jurisdiction of administrative punishment cases provided for in this Law may be determined from the following aspects:

1. Each administrative supervision department shall have jurisdiction over cases of administrative violations occurring within the scope of its own authority.

2. Administrative punishment cases are under the jurisdiction of the administrative supervision department at the place where the illegal conduct occurred. However, if it is more convenient for the administrative supervision department of the place of residence of the offender to have jurisdiction, the administrative supervision department of the place of residence of the offender may also have jurisdiction after consultation with the administrative supervision department of the place where the act occurred.

3. Where two or more administrative supervision departments have jurisdiction to punish the same illegal conduct, or where the location of the illegal conduct is difficult to ascertain, the administrative supervision department that first investigates and handles the case has jurisdiction.

4. Where two or more administrative supervision departments have a dispute over the power of administrative punishment, it shall be resolved through consultation. Where consultation fails, report to the common administrative organ at the level above to designate jurisdiction.

5. The level of jurisdiction over administrative penalties shall be prescribed by specific laws and regulations. This Law does not clearly stipulate this, and the level of jurisdiction of administrative punishment shall be determined by the relevant administrative departments under the State Council on their own in accordance with the illegal conduct, the geographical scope involved in the illegal subject, and the extent of the impact of the illegal act.

Third, the administrative supervision department applies administrative penalties

The application of administrative punishment refers to the activity of the administrative supervision department, on the basis of determining that the perpetrator's conduct is illegal, deciding in accordance with law whether to impose administrative punishment on the actor and how to impose punishment, and it is an activity that applies the principles, forms, and specific methods of administrative punishment provided for in administrative law norms to various specific administrative violation cases.

(1) The conditions for the application of administrative penalties

1. The precondition for the application of administrative penalties is that citizens, legal persons or other organizations have committed administrative violations.

2. The subject condition for the application of administrative punishment, that is, the administrative punishment must be implemented by the supervision department that enjoys the statutory administrative punishment power.

3. The object conditions for the application of administrative punishment must be a person who violates the law and should be subject to administrative punishment and has a certain capacity for responsibility.

4. The limitation period for the application of administrative penalties, according to article 29 of the Administrative Punishment Law, if the illegal act is not discovered within two years, the administrative punishment will not be given.

(2) Methods for applying administrative penalties

1. No penalty and no penalty.

(1) No penalty is imposed

Non-punishment refers to the decision made by an administrative organ not to apply administrative punishment to certain persons who have violated the law in form but should not bear the responsibility for violating the law in substance because of the existence of reasons for the existence of reasons for existence provided for in laws and regulations.

(2) Exemption from penalty

Exemption from punishment refers to the decision made by administrative organs to exempt offenders who should have been punished in accordance with the provisions of laws and regulations, considering the existence of special circumstances prescribed by law.

2. "May" penalties versus "shall" penalties

(1) "May" penalty

"May" punishment means that the subject of administrative punishment may or may not give administrative punishment to the offender. Alternatively, the punishment may be severe or mitigated, or the punishment may not be mitigated or severe.

(2) "shall" be punished

"Should" punishment includes the following three meanings: first, administrative punishment should be applied to violators; second, punishment should be mitigated, mitigated or exempted; third, punishment should be heavier. The subject of an administrative punishment has no right to decide whether to impose a penalty.

3. Mitigating, mitigating, and heavier punishments

(1) Lenient punishment

Lenient punishment refers to the administrative subject's choice to apply a lighter method and a lower range of punishment to the administrative offender within the statutory punishment method and punishment range.

(2) Mitigating punishment

Mitigating punishment refers to the administrative entity's application of administrative penalties to the offending counterparty below the minimum statutory range of punishments.

(3) Heavier punishment

Aggravated punishment is the symmetry of light punishment, which refers to the application of a more severe punishment method to the offending counterparty within the statutory punishment method and range, or the application of a penalty close to the upper limit or upper limit within the range allowed by a certain punishment method.

4. Single and concurrent

(1) Single

Single punishment means that the administrative entity applies only one punishment method to the offending counterparty.

(2) Merger

Concurrent punishment means that the administrative entity applies two or more administrative punishment methods to a certain illegal act of the other party in accordance with the law.

Article 62 Where any unit violates the provisions of this Law by restricting or excluding legal persons or other organizations outside the region or system from participating in bidding, and appoints a bidding agency for the bidder, the bidder is compelled to entrust the bidding agency to handle bidding matters, or interferes in bidding and bidding activities in other ways, it shall be ordered to make corrections;

Where individuals use their authority to carry out the illegal acts mentioned in the preceding paragraph, responsibility is to be pursued in accordance with the provisions of the preceding paragraph.

【Interpretation】The provisions of this article are the legal liability that should be borne for illegal acts of interfering in bidding activities.

First, the illegal acts provided for in this article

1. Restrict or exclude legal persons or other organizations outside the region or the system from participating in bidding. In practice, some units, out of consideration for departmental interests or local interests, set up various obstacles to restrict or exclude legal persons or other organizations outside the region or system from participating in bidding, which violates the principle of fairness and impartiality that should be followed in bidding and bidding. In this regard, article 6 of this law clearly stipulates that the bidding activities of projects that must be tendered according to law are not restricted by regions or departments. No unit or individual may illegally restrict or exclude legal persons or other organizations outside that region or system from participating in bidding.

2. Appoint a tendering agency for the tenderer. Bidding agencies refer to social intermediary organizations established in accordance with law, engaged in bidding agency business and providing related services. As a social intermediary organization, the bidding agency mainly uses its professional advantages to obtain the trust of the bidder, and its business should come from the entrustment of the bidder. At present, China's bidding market is not yet perfect, and some bidding agencies that exist in real life have not yet separated from the relevant administrative organs, have semi-official colors, and mainly rely on administrative instructions in the source of business, which seriously deviates from the norms of market behavior. To this end, paragraph 1 of Article 12 of this Law stipulates that the tenderer has the right to choose a tendering agency on its own and entrust it to handle the tendering matters, and no unit or individual may appoint a tendering agency for the tenderer in any way.

3. The bidder is forced to entrust the bidding agency to handle the bidding matters. For bidders with the ability to prepare bidding documents, whether it is necessary to entrust a bidding agency to conduct bidding is part of the bidder's independent management right, and other units or departments may not interfere. Forcing the bidder to entrust the bidding agency to handle the bidding matters is bound to infringe on the bidder's operational autonomy and violate the principle of market economy. In view of this, paragraph 2 of Article 12 of this Law stipulates that if the tenderer has the ability to prepare the tender documents and organize the evaluation of the bid, he may handle the bidding matters on his own. No unit or individual may compel them to entrust a bidding agency to handle bidding matters.

4. Interfere in tendering and bidding activities in other ways. Bidders have the right to conduct bidding on their own, and no organ or individual may interfere in bidding and bidding activities in any way except to accept the supervision of the relevant supervision departments in accordance with law. The "other way" referred to here is a flexible provision for the sake of legislative technology in order to avoid omitting other interference in tendering and bidding that may exist in real life.

Second, the subject of legal liability provided for in this article is any person with legal capacity, including legal and natural persons, but more often administrative departments and, in some cases, individuals with authority.

Third, the form of legal liability provided for in this article

1. Order corrections. Where the perpetrator has unlawful conduct provided for in this article, the relevant administrative supervision department shall order him to make corrections within a time limit.

2. Administrative sanctions. Where a unit engages in illegal conduct provided for in this article, the relevant administrative supervision department shall give administrative sanctions to its directly responsible managers or other directly responsible personnel. Where individuals use their authority to engage in the above-mentioned illegal conduct, they shall also be given administrative sanctions. Administrative sanctions include warnings, demerits, major demerits, demotion, removal, expulsion, and so forth.

Article 63 Where a functionary of a state organ who has the responsibility of administrative supervision over bidding and bidding activities in accordance with law engages in malpractice for personal gain, abuses of power, or neglects his duties, and constitutes a crime, criminal responsibility shall be pursued in accordance with law; where it does not constitute a crime, administrative sanctions shall be given in accordance with law.

【Interpretation】The provisions of this article refer to the legal responsibility of the functionaries of state organs for their illegal acts.

First, the offences provided for in this article

1. Crime of abuse of power. The crime of abuse of power refers to the conduct of a functionary of a state organ in exercising his or her powers in violation of the purposes authorized by law, exceeding the scope of his or her powers, or violating procedures for exercising his or her powers, resulting in major losses to public property, the state, and the interests of the people. The crime of abuse of power is a new crime established in China's new criminal law.

The crime of abuse of power has the following characteristics:

(1) Special subjects of the main system of crime. According to the new Criminal Law, the main body of the crime of abuse of power is composed of employees of state organs. Staff of State organs refers to the legislative, judicial and administrative organs of the State and the staff of military organs. Specifically, as far as the provisions of this article are concerned, the main body of the crime of abuse of power is the staff of a state organ who has the responsibility of administrative supervision over bidding and bidding activities in accordance with the law.

(2) The subjective element of the crime is intentional. The perpetrator clearly knows that his or her conduct violates the purpose of authorization or use of power, clearly knows that his conduct does not conform to the scope provided by laws or regulations, or clearly knows that his conduct is in violation of procedures. As for what motives and purposes are there, it is not asked.

(3) Objective elements of the crime: the crime of abuse of power can only be constituted by acts, and omission does not constitute this crime; to constitute the crime of abuse of power, the perpetrator's behavior must cause major losses to public property, the interests of the state and the people, and the abuse of power has a criminal law causal relationship with the harmful consequences.

(4) The object of the offence is the normal activity of the State organs.

According to article 397 of the Criminal Code, the crime of abuse of power shall be punished by fixed-term imprisonment of not more than 3 years or criminal detention;

2. Crimes of dereliction of duty. The crime of dereliction of duty refers to the conduct of a functionary of a state organ who is seriously irresponsible, fails to perform or incorrectly performs his duties, resulting in major losses to public property, the interests of the state and the people.

The crime of dereliction of duty has the following characteristics:

(1) Special subjects of the main criminal system. According to the new Criminal Law, the main body of the crime of dereliction of duty is composed of the staff of the state organs. For the purposes of this article, the subject of the crime of dereliction of duty shall be the staff of a state organ who has the responsibility of administrative supervision over tendering and bidding activities in accordance with the law.

(2) The subjective aspect of the crime may be constituted by negligence or by intent, but only indirectly intentionally.

(3) In terms of the objective aspect of crime, first of all, the crime of dereliction of duty can be manifested as acting or inaction. Secondly, the offence of dereliction of duty must objectively have the harmful consequences prescribed by law. Finally, to constitute the crime of dereliction of duty, there must be a causal relationship between the dereliction of duty and the statutory harmful consequences.

(4) The object of the offence is the normal activity of the State organs.

According to article 397 of the Criminal Code, the crime of dereliction of duty shall be punishable by imprisonment of not more than 3 years, criminal detention or public surveillance;

3. Crimes of favoritism. The crime of favoritism and malpractice refers to the conduct of a functionary of a state organ taking advantage of his position to abuse his power for personal gain, commit fraud, bend the law to shield, and illegally exercise his or her powers or duties, with serious circumstances.

Characteristics of the crime of favoritism:

(1) The special subject of the main system of the crime, that is, the staff of the state organ, specifically as far as this article is concerned, the subject of the crime of favoritism and fraud is the staff of the state organ who is responsible for the administrative supervision of bidding and bidding activities in accordance with the law.

(2) The objective aspect of the crime is manifested as, first, the act of favoritism and fraud, that is, taking advantage of one's position to abuse one's power for personal gain, engaging in deception, and exercising one's authority in violation of the law. Secondly, acts of favoritism and fraud have caused heavy losses to public property, the interests of the State and the people. The crime of favoritism is a consequence offender, that is, only if the act has caused serious harm to the result, it constitutes a crime.

(3) The subjective aspect of the crime is constituted by intent and is generally direct intentional.

(4) The object of criminal infringement is the normal management activities of state organs.

According to article 397 of the Criminal Law, a functionary of a State organ who commits the crime of favoritism, causing major losses to public property, the interests of the State and the people, shall be sentenced to fixed-term imprisonment of not more than 5 years or criminal detention;

Where a functionary of a state organ who has the responsibility for administrative supervision over bidding and bidding activities in accordance with law engages in malpractices for personal gain, abuses his powers, or neglects his duties, and the circumstances are obviously minor and does not constitute a crime, the relevant administrative supervision departments shall give administrative sanctions in accordance with law.

Article 64 Where a project that must be tendered in accordance with law violates the provisions of this Law and the winning bid is invalid, the winning bidder shall be re-determined from among the remaining bidders or re-tendered in accordance with this Law in accordance with the conditions for winning the bid provided for in this Law.

【Interpretation】The provisions of this article are the legal consequences of the invalidation of the winning bid.

First, the case of invalidity of the winning bid provided for in this Law

1. Where a bidding agency violates the provisions of this Law by divulging the circumstances and materials related to bidding and bidding activities that should be kept confidential, or colluding with bidders or bidders to harm the interests of the state, the societal public interest or the lawful rights and interests of others, affecting the results of winning the bid, the winning bid shall be invalid. (Article 50 of the Law on Tendering and Bidding)

2. If the tenderer discloses to others the name and quantity of potential bidders who have obtained the tender documents or other circumstances related to tendering and bidding that may affect fair competition, or the act of leaking the bid floor affects the result of winning the bid, the winning bid shall be invalid. (Article 52 of the Law on Tendering and Bidding)

3. Bidders collude with each other to bid, collude with bidders to bid, or pay bribes for winning bids are invalid. (Article 53 of the Law on Tendering and Bidding)

4. If the bidder bids in the name of others or fraudulently obtains the winning bid in other ways, the winning bid shall be invalid. (Article 54 of the Law on Tendering and Bidding)

5. Where the tenderer violates the provisions of this Law and negotiates with the bidder on the substantive content of the bidding price, bidding plan, etc., affects the result of the winning bid, the winning bid shall be invalid. (Article 55 of the Law on Tendering and Bidding)

6. If the bidder determines the successful bidder other than the successful candidate recommended by the bid evaluation committee in accordance with the law, or determines the successful bidder on his own after all bids are rejected by the bid evaluation committee, the winning bid shall be invalid. (Article 57 of the Law on Tendering and Bidding)

The circumstances that lead to the invalidity of the winning bid can be divided into two categories: the illegal act directly leads to the invalidity of the winning bid, such as the provisions of articles 53, 54 and 57 of this Law;

Second, the meaning of "invalid winning bid"

The so-called invalidity of the winning bid means that the winning bid determined by the bidder has lost its legal binding force, that is to say, the bidder who has won the bid according to the illegal act has lost the qualification to sign a contract with the bidder, and the bidder no longer has the obligation to sign a contract with the successful bidder. Where a contract has already been signed with the tenderer, the contract signed is invalid. Since, in the case of invalid winning bids, the law often requires the bidders to re-identify the winning bidders from among the remaining bidders in accordance with the winning conditions laid down in this Law, the invalidity of the winning bid does not mean that the bidding procedures are invalid. Of course, in some cases, if the violation involves all the bidders, or if none of the bidders meet the conditions for winning the bid, the bidder should re-bid.

Third, the legal consequences of the invalidation of the winning bid

If, in accordance with the provisions of this Article, the winning bid is invalid, the bidder shall re-determine the winning bidder from among the remaining bidders in accordance with the conditions for winning the bid stipulated in this Law. If there is no successful bidder who meets the prescribed conditions, the bidder shall conduct a new bidding in accordance with this Law.

In addition, the invalidity of the winning bid will also involve other legal consequences: if the tenderer and the bidder have signed a contract, the contract is invalid. According to the Contract Law, after a contract is invalid, the property acquired as a result of the contract shall be returned; if it cannot be returned or is not necessary, it shall be compensated at a discounted price. The party at fault should also compensate the other party for the losses suffered as a result. Where both parties are at fault, they shall each bear corresponding responsibility.

Chapter VI Supplementary Provisions

This chapter is a supplementary provision and consists of 4 articles. It provides for the objection procedure for interested parties, exceptions to the scope of compulsory tendering, conflict norms and the time of entry into force of this Law. Technically speaking, the by-laws generally provide for non-normative provisions that are complementary. These non-normative provisions do not logically become an organic whole.

Article 65 Where bidders and other interested parties find that bidding and bidding activities do not conform to the relevant provisions of this Law, they have the right to raise objections to the bidders or to complain to the relevant administrative supervision departments in accordance with law.

【Interpretation】This article provides for the right of appeal of those who have objections to bidding activities.

First, the subjects of rights provided for in this article are bidders and other interested parties. Other interested parties refer to natural persons, legal persons or other organizations other than bidders who have a direct or indirect interest in the bidding project or bidding activities, such as the user of the bidding project.

Second, in accordance with the provisions of this article, when bidders and other interested parties raise objections to bidders or complain to the relevant administrative supervision departments, they do not need to produce accurate evidence to prove that the bidding and bidding activities are illegal, as long as they "believe" that the bidding and bidding activities do not comply with the relevant provisions of this Law, but the bidders and other interested parties cannot use this to interfere with the bidding activities and must not slander and frame them.

Third, the unit that accepts the objection is the bidder, and the department that accepts the complaint is the relevant administrative supervision department.

Article 66: Projects involving national security, state secrets, emergency rescue and disaster relief, or projects that are not suitable for bidding under special circumstances such as the use of poverty alleviation funds to carry out work-for-charity, or the need to use migrant workers, may not be subject to bidding in accordance with the relevant provisions of the State.

【Interpretation】The provisions of this article are exceptions to compulsory bidding.

In accordance with the provisions of this Article, the following projects may not be tendered in accordance with national regulations.

First, projects involving national security. The so-called projects involving national security refer to projects involving national security, such as national defense, cutting-edge science and technology, and military equipment, which involve national security and will have a major impact on national security. These projects, which have a significant impact on national security, require special procurement methods.

Second, projects involving state secrets. The so-called state secrets refer to matters related to national security and interests, determined in accordance with legal procedures, and known only to a certain range of people within a certain period of time.

Because of the state secrets involved, there is a conflict between the legal requirements for the confidentiality of these projects and the requirements for openness in the tendering process. Therefore, projects involving state secrets are not suitable for bidding.

Third, emergency rescue and disaster relief projects. Rescue and disaster relief has a strong time nature, it is necessary to take rapid and decisive action in the short term to eliminate dangerous situations and relieve disaster victims, and the bidding includes a series of complex procedures such as issuing bidding documents, qualification review, bidding, and bid evaluation, which is bound to take a long time, and obviously does not meet the time requirements of the rescue and disaster relief project. Therefore, emergency rescue and disaster relief projects are not suitable for bidding.

Fourth, use poverty alleviation funds to implement projects that use work for relief and need to use migrant workers. The so-called work-for-relief refers to a policy in which the state uses poverty alleviation funds to build poverty alleviation projects, absorbs poverty alleviation targets to participate in the construction of the project or becomes the staff of the project after completion, and achieves the purpose of poverty alleviation in the form of wages and the regular income of the project. Since the cash-for-work project has a clear service target, there is no need for bidding.

Fifth, other circumstances of tendering do not apply.

Where procurement projects fall within the scope listed above, tendering may not be conducted in accordance with national regulations. The "state regulations" referred to here refer to laws, administrative regulations or other normative documents issued by the State Council.

Article 67 Where a project using loans or assistance funds from an international organization or a foreign government is used to conduct bidding, and the lender or provider of funds has different provisions on the specific conditions and procedures for bidding and bidding, those provisions may apply, except where it is contrary to the societal public interest of the People's Republic of China.

【Interpretation】The provisions of this article are the application of international bidding procedures or foreign bidding procedures to China's bidding activities.

Since the beginning of reform and opening up, China's use of loans from international financial organizations and foreign governments has gradually expanded. At present, the loans of international financial organizations and foreign governments used by China mainly include loans from the World Bank, loans from the Asian Development Bank, and loans from the Japan Overseas Economic Cooperation Fund. In 1996, the balance of loans from international financial organizations in China was 16.739 billion US dollars, and the balance of loans from foreign governments was 22.164 billion US dollars. At the request of lenders, projects utilizing these loans generally require international competitive tenders or domestic public tenders. China's window management departments for these loans have also formulated some administrative implementation regulations in accordance with the relevant provisions and requirements of lenders, such as the Guidelines for domestic competitive bidding and procurement of World Bank loan projects, the Measures for reviewing the Bidding and Procurement of Mechanical and Electrical Equipment for World Bank Loan Projects, the Notice on the Text of the Standards for Bidding and Procurement of World Bank Loan Projects, and the Notice on promulgating the Guidelines entrusted by the International Bidding Agency for Loan Projects of the World Bank and the Asian Development Bank. In this way, a relatively unique competitive bidding and bidding system using loans from international financial organizations and foreign governments has been formed in China. The bidding and bidding of the above-mentioned loan projects are generally more transparent and standardized, and each step of the procedure has corresponding supervision measures, such as the review of bidding documents, the review of prequalification decisions, the review of bid evaluation, etc., thus ensuring openness, fairness and strong competitiveness. However, there are also some problems in practice, one of the main manifestations of which is that there are certain differences between the relevant domestic bidding procedures and the bidding procedures of international financial organizations, such as the use of exclusive bidding according to the Asian Development Bank's Loan Procurement Guidelines, and the way of inquiry procurement, that is, a procurement method that compares the quotations of more than three suppliers to ensure that the price is competitive, is also allowed. In addition, there are obvious differences with China's law on tendering and bidding in terms of the review of relevant procedural acts. In order to solve the problems arising from the differences between the bidding procedures of international financial organizations and foreign governments and the domestic bidding procedures, this Law stipulates that if the lender or the provider of funds for bidding projects using loans or assistance funds from international organizations or foreign governments has different provisions on the specific conditions and procedures for bidding and bidding, its provisions may be applied.

According to the provisions of this Article, the premise for applying the specific conditions and procedures proposed by lenders and fund providers is that these conditions and procedures do not run counter to the social and public interest of the People's Republic of China. In theory, such a provision is called a reservation of public order. In international interaction and cooperation, the reservation of public order is often used as a means of limiting or excluding the application of foreign law.

Article 68 This Law shall enter into force on January 1, 2000.

【Interpretation】 This article stipulates the time when this Law will enter into force.

There are several different situations in which a law takes effect: some laws enter into force on the date of promulgation, and for some of the more important and complex laws, they often enter into force some time after their promulgation in order to ensure that there is a familiar process for the public.

The time of entry into force of a law also involves the retroactivity of the law, i.e. whether a newly enacted law applies to an act that occurred before it entered into force. Generally speaking, the law is based on the principle of non-retroactivity, with the exception of retroactivity. As far as this Law is concerned, we do not consider it retroactive. The original legal provisions shall apply to acts that occurred before the entry into force of this Law; In cases decided before the entry into force of this Law, if a party appeals after the entry into force of this Law, the court shall conduct a second-instance trial in accordance with the original law.

The temporal scope of law also concerns the question of when the law lapses. Some laws specify in the provisions the period of their application, which automatically expires. However, most laws do not specify in the provisions the time of their lapse, and when the law expires is generally prescribed by the newly promulgated relevant laws. There are also laws that naturally lapse due to changes in objective circumstances. It may be argued that this act will remain in force until it is replaced by a new law or is explicitly declared repealed.

Occurrence of legal acts. Only a sealed bid is considered a formally qualified bid (i.e. is it real?). In order to meet the requirements of the solicitation documents, it can be opened in public and the relevant quotation content is announced. Tender documents that are not sealed, or that have been opened, shall be considered invalid tenders and shall not be read out.

In order to ensure that bidders and other participants are aware of the bidding status of all bidders and to increase the transparency of the bid opening process, the names of the bidders, the bidding price and other main contents of the bidding documents shall be publicly announced to those present after the sealing of all bidding documents (i.e. the bidding documents received before the deadline for submission of bidding documents) has been determined to be correct. For the same purpose, the entire bid opening process needs to be documented and archived for future reference. The record of the opening of tenders shall generally record the following matters, which shall be signed and confirmed by the presiding officer and other staff: (1) if there is a case number, its case number; (2) the name and quantity of the bidding project; (3) the name of the bidder; (4) the bidding quotation; (5) the date of opening of the tender; (6) other necessary matters.

Article 37 The bid evaluation committee established by the bidder in accordance with law shall be responsible.

For projects that must be tendered according to law, the bid evaluation committee shall be composed of representatives of the bidders and experts on relevant technical and economic aspects, and the number of members shall be an odd number of more than five, of which experts in technical and economic fields shall not be less than two-thirds of the total number of members.

The experts mentioned in the preceding paragraph shall have been engaged in work in relevant fields for eight years and have senior professional titles or have the same professional level, and the bidders shall be determined by the bidders from the roster of experts provided by the relevant departments of the State Council or the relevant departments of the people's governments of provinces, autonomous regions, or municipalities directly under the Central Government, or from the list of experts in the expert pool of the bidding agency;

Persons with an interest in the bidder shall not enter the bid evaluation committee of the relevant project;

The list of members of the bid evaluation committee shall be kept confidential until the results of the bid are determined.

【Interpretation】The provisions of this article are the composition of the bid evaluation committee and the manner in which it is constituted.

Bid evaluation is the review, evaluation and comparison of bid documents in accordance with the provisions and requirements of the solicitation documents. Bid evaluation is a necessary procedure for reviewing and determining the successful bidder, is an important part of ensuring the success of the bid, therefore, in order to ensure the fairness of the bid evaluation, to prevent the bid inviter from influencing the evaluation results, the bid evaluation can not be borne by the bidder or its agency alone, but should form a committee with the participation of relevant experts and personnel, responsible for the evaluation of all the bid documents according to the evaluation criteria and methods specified in the bid invitation documents, recommend the winning candidate to the bidder or directly determine the successful bidder. The bid evaluation committee is organized by the bidder.

The bid evaluation committee shall include, in addition to the necessary representatives of the tenderers or their agencies, technical, economic, legal and other experts. Since bid evaluation is a complex professional activity, it is not possible for non-professionals to evaluate and compare bidding documents, and in order to ensure the fairness and authority of bid evaluation, this article stipulates that the number of experts shall not be less than two-thirds of the total number of members. Among the expert members, technical experts are mainly responsible for evaluating the technical parts of the bidding; economic experts are mainly responsible for evaluating the economic parts such as the quotation in the bidding; and legal experts are mainly responsible for evaluating the commercial and legal affairs in the bidding. Taking into account the above-mentioned experts and representatives of tenderers and their agencies, the number of bid evaluation committees should generally be more than 5. The reason for the singular number of more than 5 people is mainly to avoid the situation that the judges have an equal number of votes for the opposite opinion when voting to determine the winning candidate or the winning bidder.

The importance of the bid evaluation work determines that certain restrictions must be placed on the qualifications of experts participating in the bid evaluation committee, and not all professional and technical personnel can enter the bid evaluation committee. Paragraph 2 of this article stipulates the qualification conditions for experts, that is, (1) 8 years of work in the relevant field. This is a requirement for real-world work experience and business familiarity. (2) Have a senior professional title or have an equivalent professional level. This is a requirement for professional standards or job titles. The restrictions of the two conditions provide a guarantee for the quality of personnel for the smooth progress of bid evaluation. These conditions are also consistent with the requirements of other relevant laws on the professionals concerned. For example, the arbitration law stipulates that arbitrators should be engaged in arbitration, lawyer or trial work for 8 years, have a senior title or have the same professional level (article 13 of the Arbitration Law).

In order to prevent the subjective arbitrariness of the bidders in selecting bid evaluation experts, the bidders shall determine the bid evaluation experts from the roster of experts provided by the relevant departments of the State Council or the relevant departments of the provincial-level people's governments or from the expert pool of the bidding agency. Some special bidding projects, such as scientific research projects, projects with particularly complex technology, etc., because the experts determined by random sampling are not competent for the evaluation of bids, or only a few experts can be competent for the evaluation of bids, so the bidders can directly determine the expert candidates. A roster of experts or a pool of experts, also known as a talent pool, is a list or database of experts in that area of expertise, which is set up according to different specialties. The experts entered into the list or database should be all experts in the field who meet the above conditions, not a small number or individual experts.

To this end, all departments of the State Council, relevant departments of provinces, autonomous regions, and municipalities directly under the Central Government, and bidding agencies that have not set up an expert pool should form an expert pool as needed to ensure the smooth progress of the bidding work.

This article also establishes a system of recusal replacement of bid evaluation committee members. The so-called recusal replacement system means that those who have an interest in the bidder should recuse themselves and must not enter the bid evaluation committee; According to the relevant laws and regulations, in any of the following circumstances, it may be determined that there is an interest in the bidder: (1) it is a close relative of the bidder or its agent; (2) it has other social relations or economic interests with the bidder, which may affect the fair evaluation of the bidding.

The list of members of the bid evaluation committee shall be classified as confidential content and shall not be disclosed until the result of the winning bid is determined.

Article 38 The tenderer shall take necessary measures to ensure that the evaluation of bids is carried out under strict confidentiality.

No unit or individual may illegally interfere with or influence the process and results of bid evaluation.

【Interpretation】The provisions of this article are the confidentiality of the evaluation of the bid and the freedom from external interference.

The so-called strict confidentiality of bid evaluation means that the evaluation of bids is carried out in a closed state, the members of the bid evaluation committee shall not have any contact with the outside world, and the suggestions for inspection, evaluation and award of bids shall not be disclosed to the bidders or personnel unrelated to the procedure. Since the criteria and methods for bid evaluation are stipulated in the bidding documents, and the evaluation factors other than price factors and price factors and their quantitative calculation methods are listed, the so-called evaluation confidentiality is not to engage in another set of standards and methods for evaluation and comparison in addition to these standards and methods, but this evaluation process is an independent activity of the bidder and its evaluation committee, and has the right to keep the whole process confidential, so that the bidders and other relevant personnel do not know some of their opinions, opinions or decisions, Ways to interfere with the evaluation of bids can also stop the members of the bid evaluation committee from leaking and communicating the relevant information to the outside world, resulting in unfair bid evaluation. Of course, if the bidder has objections to the winning bid results after the winning bid result is determined, or even believes that his rights and interests have been infringed by the bidder, he has the right to raise objections to the bidders, and if the objection is not accepted, he can also submit an appeal to the relevant administrative supervision department of the state, or directly file a lawsuit with the people's court.

The bid evaluation activity is an independent activity of the tenderer and its bid evaluation committee, and should not be interfered with or affected by the outside world. This is an inevitable requirement for China's project legal person responsibility system and enterprise management autonomy. However, in real life, some state organs and their staff, especially leading cadres, often proceed from local protectionism and even personal interests, exert all kinds of pressure on the bid evaluation committee by approving notes, making phone calls, looking for talks, etc., interfere with the results of the bid evaluation, and some even directly decide on the successful bidders, or veto or change the winning bid results without authorization, seriously infringing on the legitimate rights and interests of the bidders and bidders. In order to effectively prevent the occurrence of such illegal interference and the phenomenon of affecting the process and results of bid evaluation, this article stipulates that no unit or individual may illegally interfere with or affect the process and results of bid evaluation, so it is very necessary.

Article 39 The bid evaluation committee may require the bidder to make necessary clarifications or explanations on the contents of the bidding documents that are not clear in meaning, but the clarifications or explanations shall not exceed the scope of the bidding documents or change the substantive content of the bidding documents.

【Interpretation】The provisions of this article are the clarification of the bidder's bidding documents.

After the deadline for submission of tenders, tender documents may not be supplemented or amended, which is a basic rule. However, if, during the evaluation of bids, it is found that the content of the bidding documents is unclear, inconsistent or obvious typographical (writing) errors or purely calculated errors, the bid evaluation committee shall notify the bidders to make clarifications or explanations to confirm the correct content. For obvious typographical (writing) errors or purely calculative errors, the Bid Evaluation Committee shall allow the bidder to make corrections. Both the request for clarification and the bidder's response should be in writing. The bidder's response must be signed by the legal representative or authorized agent as part of the tender documents.

However, the clarification or clarification of the bidder is only an interpretation and correction of the above circumstances, and shall not be subject to the following acts: (1) beyond the scope of the tender documents. For example, if the tender documents do not stipulate the content, they are supplemented when clarified; the tender documents stipulate that a particular condition is a precondition for a commitment, but is interpreted as another condition, etc. (2) Changing or seeking or proposing to change the substantive content of the bidding documents. The so-called change of substantive content refers to the change of the quotation, technical specifications (parameters), main contract terms and other contents in the bidding documents. The purpose of this change in substance is to make non-compliant tenders into compliant tenders or to turn less competitive tenders into more competitive tenders. For example, in an excavator tender, the tender documents specify that the engine is cooled by water cooling, and one bidder bids with an air-cooled engine, but in clarification, the bidder insists that it is a water-cooled engine.

If there are more bidding documents that need to be clarified, a clarification meeting may be held, at which the bid evaluation committee will separately question the bidders, first ask and answer questions orally, and then confirm them in writing within the specified time and make a formal written reply.

Article 40 The bid evaluation committee shall evaluate and compare the bid documents in accordance with the evaluation standards and methods determined in the bidding documents; where there is a bid base, it shall refer to the bid base. After the bid evaluation committee completes the bid evaluation, it shall submit a written bid evaluation report to the bidder and recommend qualified candidates for winning the bid.

The tenderer determines the successful bidder on the basis of the written evaluation report submitted by the bid evaluation committee and the recommended successful candidate. The tenderer may also authorize the bid evaluation committee to directly determine the successful bidder.

Where the State Council has special provisions on the evaluation of bids for specific bidding projects, those provisions shall prevail.

【Interpretation】The provisions of this article are the evaluation criteria and methods and the evaluation report.

1. Criteria and methods for bid evaluation.

Simply put, bid evaluation is the evaluation and comparison of tender documents. What kind of criteria and methods to evaluate according to is a key issue and a matter of principle for bid evaluation. In the solicitation documents, the tenderer sets out the criteria and methods for evaluating the tender, with the aim of making these criteria and methods known to potential bidders in order to consider how to conduct the tender and ultimately succeed. Then, whether these pre-listed standards and methods can be truly adopted in the evaluation of bids is the yardstick for measuring whether the evaluation is fair and equitable. In order to ensure this fairness and fairness in the evaluation of bids, the evaluation of bids must be in accordance with the evaluation criteria and methods specified in the solicitation documents, and no standards and methods not specified in the solicitation documents shall be adopted, nor shall the evaluation criteria and methods determined by the bidding be changed. This is also a common practice in countries around the world.

The criteria for evaluating bids generally include price criteria and relevant criteria other than price criteria (also known as "non-price criteria") and how these criteria are used to determine the successful tender. Non-price criteria should be as objective and quantifiable as possible, expressed by monetary amounts, or prescribed relative weights (i.e. "coefficients" or "scores"). Generally speaking, when evaluating goods, non-price standards mainly include freight and insurance premiums, payment plans, delivery times, operating costs, the effectiveness and matching of goods, the supply capacity of spare parts and services, related training, safety and environmental benefits, etc. In the service evaluation, the non-price standard mainly includes the qualifications, experience, credibility, reliability, professionalism and management ability of the bidders and the personnel involved in the service. In the project evaluation, the non-price standards mainly include the construction period, quality, the quality of the construction personnel and management personnel, and the past experience.

The method of bid evaluation is the specific method of using the evaluation criteria to evaluate and compare bids. There are generally three methods: (1) The lowest evaluation price method. The bid evaluation committee determines the monetary amounts for different aspects of each bid on the basis of the bid evaluation criteria and then compares those amounts with the bid price. The bid with the lowest price after valuation (i.e. "evaluation price") may be selected as the winning bid. (2) Scoring method. The bid evaluation committee determines the relative weights (i.e. "scores") of different aspects of each bid on the basis of the bid evaluation criteria, and the bid with the highest score is the best bid and may be used as the winning bid. (3) Reasonable minimum bid price method. That is, the requirements of the solicitation documents can be met, and the bid with the lowest bidding price can be selected as the winning bid. Of these three evaluation methods. The first two can be collectively referred to as the "comprehensive bid evaluation method".

The so-called "State Council has special provisions on the evaluation of bids for specific bidding projects" means that the State Council may make some special provisions on the evaluation of bids by the State Council on the basis of this Law for major projects involving the national economy and people's livelihood, projects involving national security and state secrets, and certain special service projects. If these provisions exist, they shall apply.

2. Refer to the base.

The practice of setting up a bidding base is a measure taken in view of the current development of China's construction market and national conditions, and is a concrete embodiment of the bidding system with Chinese characteristics. There is a certain range of up and down fluctuations in the bid floor, and the bid evaluation committee generally compares the bid prices within this floating range. However, the bid floor is not the standard price that determines whether a bid will be successful or not, but only a reference price for the evaluation and comparison of bids. Of course, if the tender rated as the lowest evaluation price exceeds the range specified in the bid floor, the tenderer shall investigate the reasons for the exceeding the bid floor and, if reasonable, the bid shall be valid; If the bid rated as the lowest evaluation price is significantly lower than the bid floor, the tenderer should also investigate and, if it is a reasonable cost price, the bid should also be valid.

3. Bid evaluation report.

The bid evaluation report is an important document submitted to the bidder after the bid evaluation committee has completed the bid evaluation. In the bid evaluation report, the bid evaluation committee must not only recommend the successful candidate, but also state the specific reasons for such recommendation. As an important basis for bidders to determine the bid, the bid evaluation report should generally include the following contents: (1) the evaluation of the bidder's technical solution, technical and economic risk analysis; (2) the evaluation of the bidder's technical strength and facility conditions; (3) the ranking of the bidder's bids that meet the evaluation criteria; (4) the issues that need further consultation and the requirements to be met through consultation.

The tenderer shall, on the basis of the evaluation report of the bid evaluation committee, finally determine the successful bidder among the recommended successful candidates (usually 1 to 3);

Article 41 The successful bidder's bid shall meet one of the following conditions:

(1) Be able to meet the comprehensive evaluation criteria specified in the bidding documents to the greatest extent possible;

(b) be able to meet the substantive requirements of the solicitation documents and shall have the lowest evaluated bidding price, unless the bidding price is lower than the cost.

【Interpretation】The conditions for winning the bid are stipulated in this article.

This article provides two conditions for winning the bid, with reference to international practice.

1. Winning bid with the best comprehensive evaluation.

As mentioned in the interpretation of the preceding article, the so-called comprehensive evaluation refers to the overall evaluation and comparison of bidding documents according to price standards and non-price standards. When this method of integrated bid evaluation is used, relevant factors other than price are generally converted into currency or weighted calculations are given accordingly to determine the lowest evaluation price (also known as the lowest valuation bid) or the best bid. A bid that is rated as the lowest evaluation price or the best bid is considered to be the best overall evaluation. Therefore, the lowest bid price does not necessarily win the bid. When adopting this method of bid evaluation, it should be avoided as far as possible to list only the relevant criteria other than price in general in the solicitation documents, but there is no provision on how to convert it into currency or give corresponding weighted calculations, and only when evaluating bids are specific evaluation calculation factors and their quantitative calculation methods are formulated, which has a tendency to be clearly beneficial to a certain bid.

2. The lowest bid price wins.

The so-called winning bid at the lowest bid price is the winning bid with the lowest bid price, but the premise is that the bid meets the substantive requirements of the solicitation documents. If the tender does not meet the requirements of the solicitation documents and is rejected by the tenderer, the tender price, no matter how low, is not taken into account. In selecting the successful bidder in this way, it must be noted that the bid price must not be lower than the cost. The cost referred to here should be understood as the individual cost of the tenderer himself, not the average cost of society. Due to technical and managerial reasons such as tenderers, their individual costs may be lower than the social average cost. Bidders should be protected and encouraged to bid at a price lower than the societal average cost but not less than their individual cost. If the bidder's price is lower than its own individual cost, it means that after the bidder obtains the contract, he may try to cut corners and shoddy in order to save money, causing irreparable losses to the bidder. If a bidder bids at a price lower than the individual cost for the purpose of crowding out other competitors, it constitutes an act of unfair competition dumped at a low price and violates the relevant provisions of China's Price Law and the Anti-Unfair Competition Law. Therefore, if the bidder's bidding price is lower than his own individual cost, he shall not win the bid.

In general, when a tenderer procures simple commodities, semi-finished products, equipment, raw materials, and other goods of the same performance, quality or easy comparison, the price can be used as the only factor to be considered in the evaluation of the bid, in which case the evaluation method of the winning bid at the lowest bid price can be used as the criterion for selecting the successful bidder. Thus, in this case, the contract is generally awarded to the bidder with the lowest bid price. However, if it is a more complex project, or if the tenderer's main consideration in bidding is not price but the bidder's personal skills and expertise and ability, then the principle of winning the bid at the lowest bid price is difficult to apply, and a comprehensive evaluation method must be used to select the best bid, so that the purpose of the bidder can be achieved.

Article 42 If, after evaluation, the bid evaluation committee finds that all bids do not meet the requirements of the bidding documents, it may reject all bids.

If all bids for projects for which tendering must be conducted in accordance with law are rejected, the tenderer shall re-bid in accordance with this Law.

【Interpretation】The provisions of this article are the abolition of all tenders and the re-bidding.

Usually, the solicitation documents stipulate that the tenderer may annul all tenders. There are generally two situations for the abolition of all tenders: one is the lack of effective competition, such as less than 3 bids; the other is that most or all of the bidding documents are not accepted, and there are mainly the following situations: (1) The bidder is not qualified. (2) Failure to bid in accordance with the provisions of the solicitation documents. (3) The bidding documents are tenders that do not meet the requirements. (4) Borrowing or fraudulently using the name or certificate of others, or bidding with forged or altered documents. (5) Forgery or alteration of bidding documents. (6) The tenderer proposes, directly or indirectly, to give, give or agree to give any form of remuneration or benefit to the tenderer or other interested persons, prompting the tenderer to take an act or decision in the procurement process or to adopt a certain procedure. (7) The bidder refuses to accept correction of the calculation error. (8) All bid prices or evaluation prices are significantly higher than the bidder's expectations.

This article focuses on the scrapping of tenders in which all tenders do not meet the requirements of the solicitation documents. The tenderer and the evaluation committee may have two criteria for judging that the tender is not in accordance with the requirements of the tender documents: the first criterion is that only the tender that meets all the terms, conditions and provisions of the tender document is a tender that meets the requirements; Deviations from the features, terms, conditions and provisions set out in the solicitation documents, i.e. the response to the substantive requirements and conditions set out in the solicitation documents, may still be regarded as a tender that meets the requirements. For these two criteria, the tenderer shall indicate in advance in the solicitation documents which one to adopt, and this deviation shall be quantified as much as possible so that it can be taken into account in the evaluation of bids.

There is no doubt that all bids have been abolished (rejected) and that the tenderer should re-bid. If the scrap is due to a lack of competition, consideration should be given to expanding the scope of advertising. If the tender is scrapped because a majority or all of the tenders do not meet the requirements of the solicitation documents, the original prequalified bidder may be invited to submit new tender documents. It should be noted here that tenderers must not scrap bids simply for the sake of obtaining the lowest price.

Article 43 Before determining the successful bidder, the bidder shall not negotiate with the bidder on the substantive content such as the bidding price and the bidding plan.

【Interpretation】The provisions of this article prohibit negotiations with bidders on substantive content.

The reason why the tenderer is prohibited from negotiating with the bidder on the substantive content of the bidding price, the bidding scheme (technical specifications), the main contract terms, etc., is to prevent the emergence of the so-called "auction" method, in which the bidder uses the bidding submitted by one bidder to exert pressure on another bidder to reduce the bid or otherwise more favorable bidding. Many bidders avoid bidding using this method, and even if they do, they raise their bid price during the negotiation process.

However, before the bidder determines the successful bidder, it is often necessary to exchange views with the bidder and clarify certain non-substantive issues, such as the arrangement of specific delivery tools, commissioning, the determination of the installation personnel, the slight adjustment of a certain technical measure, etc., which should not be prohibited. According to the provisions of article 46 of this Law, after the successful bidder has been determined, the bidder and the successful bidder shall not negotiate the substantive content in order to change the relevant substantive content stipulated in the solicitation documents and bidding documents. This is also a logical conclusion.

Article 44 The members of the bid evaluation committee shall perform their duties objectively and impartially, abide by professional ethics, and bear personal responsibility for the appraisal opinions submitted.

Members of the bid evaluation committee shall not have private contact with bidders and shall not accept property or other benefits from bidders.

The members of the bid evaluation committee and the relevant staff participating in the bid evaluation shall not disclose the evaluation and comparison of the bidding documents, the recommendation of the successful candidate and other information related to the evaluation of the bid.

【Interpretation】The provisions of this article are the professional ethics and disciplinary requirements of the bid evaluation committee.

The first paragraph of this article stipulates the general professional ethics of the members of the bid evaluation committee, that is, the evaluation of bids is out of an impartial heart, objective and comprehensive, does not favor or exclude a particular bid, and is responsible for the evaluation opinions of individuals.

Paragraph 2 of this article stipulates the prohibitive obligation of the members of the bid evaluation committee, that is, the obligation not to be an act. Since the members of the bid evaluation committee enjoy the important power to evaluate and compare bids and recommend the successful candidates, in order to win the bid, bidders often approach, co-opt or corrupt the members of the bid evaluation committee by giving money or other benefits. The so-called property mainly refers to money, valuables, etc.; the so-called other benefits refer to any other material or immaterial benefits other than money and property, such as inviting guests to eat, entertainment, traveling abroad, job transfers, job promotions, house decoration, pornographic services, and so on. In order to ensure the fairness and impartiality of the bid evaluation, the bid evaluation committee shall not contact the bidders privately and shall not accept gifts or other benefits from the bidders.

Paragraph 3 of this article provides for the confidentiality obligation of the members of the bid evaluation committee. Since article 38 of this Law stipulates that bid evaluation must be conducted in strict confidentiality, the members of the bid evaluation committee, as the direct bearers of the bid evaluation work, have the best knowledge of the evaluation and comparison of the bidding documents, the recommendation of the successful candidates and other relevant circumstances, so it is natural to have the obligation to keep the evaluation of bids confidential. Because the relevant bid evaluation staff has also been exposed to some situations in the bid evaluation process, they also have the obligation of confidentiality and must not disclose the above relevant information to the outside world.

Article 45 After the successful bidder is determined, the bidder shall issue a notice of winning the bid to the successful bidder, and at the same time notify all bidders who have not won the bid of the result of the winning bid.

The notice of winning the bid has legal effect on the bidder and the successful bidder. After the notice of winning the bid is issued, if the bidder changes the result of winning the bid, or the winning bidder abandons the winning project, it shall bear legal responsibility in accordance with law.

【Interpretation】The provisions of this article refer to the notice of winning the bid and its legal effect.

1. The nature of the notice of winning the bid.

After the successful bidder is determined, the bidder shall promptly (within 10 days in the case of countries and regions) notify the successful bidder and all unsuccessful bidders of the winning bid. The notice of winning the bid is a written notification document issued to the successful bidder informing the successful bidder of the winning bid. China's Contract Law stipulates that contracts are concluded in the form of offers and commitments. An offer is an expression of intent to enter into a contract with another person, which is specific in content and indicates that the offeror is bound by the offeror's acceptance; On this basis, it can be considered that the tender submitted by the bidder is an offer, and the notice of winning the bid of the tenderer is an acceptance of the tenderer's offer.

2. Entry into force of the notice of winning the bid and formation of the contract.

Article 26 of the Contract Law stipulates that the notice of undertaking shall take effect when it reaches the offeror, and if no notice is required, it shall take effect when the undertaking is made in accordance with the transaction customs or the requirements of the offer. This is the "reachivism" in which the commitment takes effect. However, as a commitment under the Tendering and Bidding Law, unlike the general commitments stipulated in the Contract Law, the notice of winning the bid cannot adopt the "arrival doctrine" but should adopt the "letter doctrine", that is, the notice of winning the bid takes effect when it is issued and is binding on the successful bidder and the tenderer. The reason is that, according to the requirements of the "arrival doctrine", even if the notice of winning the bid is issued in a timely manner, it is possible that there may be a delay, loss or wrong vote in the transmission process that is not due to the fault of the tenderer, resulting in the successful bidder failing to receive the notice within the validity period of the tender, and the tenderer loses the right to bind the successful bidder. According to the requirements of "letter-sending doctrine", the above-mentioned rights of the tenderer can be protected. This article stipulates that "if the bidder changes the result of the winning bid after the notice of winning the bid is issued, or the successful bidder abandons the winning project, it shall bear legal responsibility in accordance with law", indicating that this law also adopts "letter-sending doctrine".

Article 25 of the Contract Law stipulates that a contract is formed when an undertaking enters into force. Therefore, when the notice of winning the bid is issued, the legal effect of the commitment and the formation of the contract occurs. Therefore, after the notice of winning the bid takes legal effect, the bidder shall not change the result of the winning bid, and the bidder shall not abandon the winning project. The tenderer changes the result of the winning bid, changes the winning bidder, and the real? The above is an act of unilaterally tearing up the contract; the bidder abandoning the winning project is an act of non-performance of the contract. Both acts are breaches of contract and should therefore be liable for breach of contract. Article 107 of the Contract Law stipulates that "if one of the parties fails to perform its contractual obligations or the performance of its contractual obligations is not in accordance with the agreement, it shall bear the liability for breach of contract such as continuing to perform, taking remedial measures or compensating for losses", and article 112 stipulates that "if one of the parties fails to perform its contractual obligations or the performance of contractual obligations does not conform to the agreement, causing losses to the other party, the amount of damage compensation shall be equivalent to the losses caused by the breach, including the benefits that can be obtained after the performance of the contract." However, it shall not exceed the losses that may be caused by the breach of contract that the breaching party foresees or should have foreseen at the time of the conclusion of the contract". In addition, this law also stipulates that administrative legal liability may be pursued against the breaching party.

Article 46 The bidder and the successful bidder shall, within 30 days from the date of issuance of the notice of winning the bid, conclude a written contract in accordance with the bidding documents and the bidding documents of the successful bidder. The tenderer and the successful bidder shall not enter into other agreements that deviate from the substance of the contract.

If the bidding documents require the successful bidder to submit a performance bond, the successful bidder shall submit it.

【Interpretation】The provisions of this article are to conclude a written contract and provide a performance bond.

1. Conclusion of written contract and entry into force of contract.

After the notice of winning the bid is issued, it will be legally binding on both the bidder and the successful bidder, and the contract will be formed. This article stipulates that the tenderer and the successful bidder shall sign a contract within 30 days from the date of issuance of the notice of winning the bid, which is a mandatory provision and has two very important significances:

(1) Stipulate that the written contract shall take effect when the contract is signed. Article 44 of China's Contract Law stipulates that "a contract formed in accordance with law shall take effect upon its establishment." Where laws or administrative regulations provide that approval, registration, or other formalities shall take effect, follow those provisions." This is the general rule regarding the entry into force of a contract. However, due to the specific circumstances of the tendering method, the entry into force of the procurement contract is also relatively special. At present, there are roughly three different provisions internationally for the entry into force of procurement contracts. First, it shall take effect when the tenderer issues a notice of winning the bid to the successful bidder, that is, the contract shall take effect when the contract is formed. This provision is the same as the above-mentioned general provisions of China's Contract Law. Second, the contract takes effect when the successful bidder signs a written procurement contract that is in line with its bid, that is, when the written contract is signed, the contract becomes effective. Third, the procurement contract takes effect when it is submitted to the administrative authority for approval. It can be seen from this that, except for the first provision, where the contract becomes immediately effective, the other two provisions indicate that there is a certain time interval between the formation of the contract and the entry into force of the contract, and the conclusion of the contract does not mean that the contract will take effect immediately. The provisions of this article show that China's Law on Tendering and Bidding adopts the second provision mentioned above on the effectiveness of procurement contracts. However, where other laws or administrative regulations stipulate that approval, registration and other formalities should be completed before the contract takes effect, it belongs to the third provision mentioned above.

(2) Further clarify the rights and obligations of the parties to the contract. Signing a written contract, on the one hand, can make up for the shortcomings of the notice of winning the bid being too simple, on the other hand, the relevant substantive content specified in the bidding documents and bidding documents (including the clarification and modification of the bidding documents and bidding documents) can be further clarified and organized, and unified and fixed in the form of a contract, which is conducive to clarifying the relationship between the rights and obligations of both parties and ensuring the performance of the contract. The so-called signing of the contract within 30 days can be signed on the day of the issuance of the notice of winning the bid, or it can be signed on the 30th day after the notice of winning the bid is issued, which should be determined entirely by the two parties through consultation, and the law does not impose it.

It should be noted that the written contract signed between the tenderer and the successful bidder merely fixes the provisions, conditions and terms of the solicitation documents and tender documents in the form of a written contract, on which the tender documents and tender documents are the basis. Therefore, the conclusion of a written contract shall not require the bidder to undertake tasks other than the solicitation documents or modify the substantive content of the bidding documents, let alone sign another agreement departing from the substantive content of the contract; otherwise, because the contract (agreement) violates the original purpose of the bidding and bidding, the contract (agreement) shall be invalid.

2. Submission of performance bond.

It is a right of the tenderer to require the successful bidder to submit a performance bond of a certain amount. The security deposit shall be provided in the form of cash, cheque, performance guarantee or bank guarantee in an appropriate format and amount, as specified in the solicitation documents or in accordance with the decision of the tenderer after the evaluation of the tender, and shall be sufficient to urge the successful bidder to perform the contract. In general, the performance bond should be returned after the successful bidder has performed the contract. However, in the construction contract, the tenderer may extend a part of the deposit until the completion of the project, i.e. until the final acceptance of the project. In a contract for the purchase of goods or services, the tenderer may also extend a portion of the deposit until after installation or commissioning.

If the successful bidder refuses to submit a performance bond, it may be deemed to have abandoned the winning project (see the relevant provisions of article 45, paragraph 2 of this Law) and shall bear the liability for breach of contract. In this case, the tenderer may select the one with the highest ranking as the successful tender from the remaining tenders that are still valid, but the tenderer also has the right to reject all remaining tenders and reorganize the tender.

3. The nature of the performance bond.

Performance bonds differ from deposits, advances, and guarantees. According to article 115 of China's Contract Law, if the party who pays the deposit does not perform the agreed obligation, it has no right to demand the return of the deposit; if the party receiving the deposit does not perform the agreed debt, it shall return the deposit twice. Since this Law does not stipulate whether a tenderer who accepts a performance bond should double the performance guarantee when it does not perform the contract, we cannot regard it as a deposit. Second, performance bonds are also different from advance payments. The advance payment is part of the performance that one of the parties to the contract pays the contract price in advance before the performance of the contract to help the obligor better perform the contract. The advance payment does not follow the deposit penalty, that is, if the parties do not perform the contract after the advance payment is delivered, there is no problem of loss or double return. The performance bond, on the other hand, is not refundable. Finally, performance bonds are also different from guarantees. Guarantee is a guarantee method in which a third party agrees with the creditor that when the debtor does not perform the obligation, the third party will perform the debt, which belongs to the person's guarantee.

When the performance bond takes the form of a bank guarantee, it is most likely to be confused with the bank guarantee. Bank guarantee is a form of guarantee provided by a bank with its own property or credit for the debts of others, and it is also a kind of guarantee, a guarantee for a new person. The bank guarantee, which is used as a performance bond, is only the bank's guarantee to pay the corresponding guarantee amount from the account opening account of the successful bidder if it does not perform the contract. So the bank guarantee is real? It is still the guarantee of the successful bidder itself, not the guarantee of the bank as a third party.

In summary, the performance bond is a special measure provided for in this Law to urge the successful bidder to perform the debt, which is different from the statutory guarantee method of the debt.

Article 47 For projects for which bidding must be conducted in accordance with law, the bidder shall, within 15 days from the date of determining the successful bidder, submit a written report on the bidding and bidding situation to the relevant administrative supervision department.

【Interpretation】The provisions of this article are the filing system for bidding and bidding.

Article 3 of this Law stipulates the scope of the items that must be tendered, that is, the scope of compulsory tendering. These compulsory bidding projects are all state investment and financing projects, projects related to the public interest or public safety, or projects that use the state's unified external debt, so it is very necessary for the law to use bidding and bidding methods, which reflects the state's intervention and supervision of such civil activities. In order to effectively supervise the bidding and bidding of these projects and to discover the possible problems in them in a timely manner, it is necessary for the bidders to submit a written report on the bidding and bidding situation to the relevant administrative supervision departments of the state.

It is worth noting that the provisions of this article only require the bidder to submit a written report to the administrative supervision department for the record, which does not mean that the legal winning result and the contract must be reviewed and approved by the administrative department before it can take effect, unless otherwise provided by law.

Article 48 The successful bidder shall perform its obligations in accordance with the contract and complete the winning project. The successful bidder shall not transfer the winning project to others, nor shall he dismember the winning project to others separately.

The successful bidder may, in accordance with the contract or with the consent of the bidder, subcontract some of the non-main and non-key work of the winning project to others to complete. The person accepting the subcontract shall have the corresponding qualifications and shall not subcontract again.

The successful bidder shall be responsible to the bidder for the subcontracted project, and the person who accepts the subcontract shall bear joint and several liability for the subcontracted project.

【Interpretation】The provisions of this article are prohibited from contract assignment and subcontracts.

1. Performance of the contract.

After the tenderer signs the contract with the successful bidder, it shall be bound by the contract and perform the contract. This article stipulates that the successful bidder shall perform its obligations in accordance with the contract and complete the winning project, which is consistent with the provisions of article 60 of China's Contract Law that "the parties shall fully perform their obligations in accordance with the agreement". According to this requirement, the successful bidder must fully perform the contract, and must not partially perform, refuse to perform, delay performance, defective performance, and must not tear up the contract.

2. Contract assignment is prohibited.

Assignment contracts in a broad sense include the assignment of creditor's rights, the assumption of debts, and the general transfer of creditor's rights and debts (which are also divided into the general transfer of all creditor's rights and debts and the general transfer of some creditor's rights and debts). The assignment of the winning item (also known as "subcontracting") provided for in this article only refers to the general transfer of all creditor's rights and obligations, and refers to the transfer of its rights and obligations in the contract by one of the parties (the successful bidder) to a third party. According to the provisions of articles 89 and 79 of China's Contract Law, the contract of assignment must be subject to the consent of the other party, but the contract may not be transferred in any of the following circumstances: (1) it shall not be transferred according to the nature of the contract; (2) it shall not be transferred according to the agreement of the parties; (3) it shall not be transferred according to the provisions of the law. Since when the bidder determines the successful bidder by means of bidding, in addition to the price factor, the main consideration is the personal performance ability of the successful bidder; at the same time, in order to prevent the successful bidder from reaping the profits through the transfer contract layer by layer and ensuring the quality of the project, paragraph 1 of this article makes a prohibitive provision that the contract shall not be transferred.

Dismembering the winning project into small parts and transferring it to others is only a form of "retail" subcontracting, which is still subcontracting in essence and is therefore prohibited.

3. Subcontracts.

The subcontract provided for in this article refers to the transfer of part of its rights and obligations in the contract by one of the parties to a third party, that is, the general transfer of part of the creditor's rights and debts. Therefore, both the subcontract and the assignment contract are general transfers of creditor's rights and obligations. However, the difference between a subcontract and an assignment contract is that the successful bidder (contractor) may subcontract with the consent of the bidder (the contractor) or in accordance with the contract, which is generally not prohibited by law. The reason why the subcontracting contract is allowed is because the successful bidder (contractor) does not necessarily have an advantage in completing a certain part of the work, and subcontracting the part to a third party with an advantage to complete it is not only not harmful but beneficial to the bidder (the contractor). However, paragraphs 2 and 3 of this article still impose some restrictions on subcontracting contracts, including: (1) subcontracting can only be part of the non-main and non-critical work of the winning project; The main body or key work shall not be subcontracted. (2) The third party who accepts the subcontract shall have the corresponding qualifications for completing the subcontracting task. (3) The person who accepts the subcontract shall not subcontract again. (4) The person accepting the subcontract shall bear joint and several liability for the subcontracted project. The so-called joint and several liability means that when the successful bidder and the subcontractor are creditors, they have the right to request the bidder as the debtor to perform all their obligations (such as paying the price, etc.); when they are debtors, they are obliged to perform all the debts to the bidder as creditors (referring to the completion of the subcontracted project), and all the debts are extinguished by one full performance. It can be seen that the above restrictions are also necessary to ensure the quality of the project and prevent the profits from being collected through subcontracting. Article 272 of the Contract Law makes similar provisions on construction contracts.

Chapter V: Legal Liability

This chapter has a total of 16 articles, which make a more comprehensive provision on illegal acts and legal liabilities in bidding and bidding activities.

The so-called legal liability refers to the mandatory adverse consequences that the actor should bear due to the violation of the obligations stipulated by law or contractually agreed upon. Legal liability generally includes the following constituent elements: subject, fault, illegal act, damage facts and causation.

The subject is the responsible subject, which refers to the subject of the illegal act or the subject that bears legal responsibility. The subjects of responsibility provided for in this Chapter are the tenderers, bidders, tendering agencies, relevant administrative supervision departments, members of the bid evaluation committee, directly responsible supervisors and other directly responsible personnel of the relevant units, as well as any unit or individual that interferes with the normal conduct of bidding and bidding activities;

Fault refers to the subjective intent or negligence of assuming responsibility, and in the legal liability provided for in this chapter, some of which are necessary for the perpetrator to be at fault, and some are not required for the actor to be at fault;

Illegal conduct refers to conduct committed by the perpetrator that harms the interests of the state, the societal public interest, or the lawful interests of others;

The fact of damage, i.e. the fact of loss or injury suffered, including personal, property, moral loss and injury;

Causation refers to the relationship between the offence and the fact of damage between the causation and the causation.

Legal liability can be divided into civil liability, administrative liability and criminal liability. Civil liability is the legal consequence that the civil offender must bear according to law. That is, a form of state coercion adopted by the civil law for civil offenders in accordance with the law for the purpose of restoring the infringed rights and is linked to certain civil sanctions; administrative liability refers to the administrative legal consequences that the subject of the administrative legal relationship should bear in accordance with the law when it violates administrative management regulations; criminal liability refers to the criminal sanctions provided for by the criminal law, which are applicable to those who violate the criminal law and are guaranteed by the coercive power of the State.

This chapter also stipulates civil liability, such as damages; criminal liability, such as criminal detention and fixed-term imprisonment for the crime of dereliction of duty and malpractice; and administrative liability, such as ordering corrections, warnings, etc.

Article 49 Where, in violation of the provisions of this Law, a project that must be tendered is not tendered, the project that must be tendered is reduced to zero, or the tendering is circumvented by any other means, it shall be ordered to make corrections within a time limit and may be fined not less than 5/10000 of the amount of the project contract; for projects that use state-owned funds in whole or in part, the implementation of the project may be suspended or the allocation of funds may be suspended, and the directly responsible supervisors and other directly responsible personnel of the unit may be punished in accordance with law.

【Interpretation】The provisions of this article are the legal liability of the tenderer for the project that must be tendered without bidding or circumventing the tender.

1. Illegal acts provided for in this Article

1. Projects that must be tendered and are not tendered. In accordance with the provisions of this Law, bidding must be held for the following engineering construction projects within the territory of the People's Republic of China, including the survey, design, construction, supervision of projects, as well as the procurement of important equipment and materials related to project construction: large-scale infrastructure, public utilities and other projects related to the public interest and public safety; projects that use state-owned funds to invest or finance in whole or in part; and projects that use loans and assistance funds from international organizations or foreign governments Other projects that must be tendered by law or the State Council. The reason why the law requires the above projects to be tendered is because the funds for the project come from taxpayers or international financial organizations, foreign government loans or aid funds, and because the project involves public interest and public safety. Procurement through bidding can achieve the legislative purpose of "protecting the national interests, the social public interest and the legitimate rights and interests of the parties to the bidding and bidding activities, improving economic benefits, and ensuring the quality of the project". If the project unit fails to bid for the above projects that must be tendered, it constitutes an illegality.

2. Reducing the number of projects that must be tendered to zero in order to circumvent bidding. Article 3 of this Law sets out the scope of compulsory tendering, but this does not mean that all projects within this scope must be tendered. For bidding projects within the scope of the law, a certain limit must be reached before compulsory bidding is required, and the law does not require projects below the limit to be tendered. The so-called bidding limit refers to the scale, standard or value that the project that must be tendered needs to be achieved. If the individual contract value of the procured project is lower than the tendering limit, even if the project is of a type that must be tendered by law, there is no need to tender because it is below the mandatory tendering limit standard. Therefore, in real life, such a phenomenon often occurs: in order to achieve the purpose of avoiding bidding, some project units adopt methods such as splitting and dismemberment to break up single contract projects into zero, so that the single contract projects after being split and dismembered are lower than the bidding limit, thereby circumventing bidding.

3. Adopting other methods to circumvent bidding. Other acts of circumventing bidding, such as concealing the truth of the facts, deliberately confusing the nature of funds and construction projects, or using various means to provide false information, under the pretext of complex project technology and limited suppliers and contractors, etc., to achieve the purpose of circumventing public bidding. Since it is impossible for legislation to exhaust the methods of circumvention of tenders that may arise in real life, it is necessary to provide for "bottom-up" clauses such as "other methods of circumventing tenders" in order to avoid loopholes in the law.

2. The subject of legal liability provided for in this Article shall be the directly responsible supervisor or other directly responsible personnel of the tenderer and the project unit. Natural persons bearing the legal responsibilities provided for in this article must have the capacity to be responsible. The so-called capacity for responsibility refers to the ability or qualification of the actor to bear legal responsibility in accordance with law. The capacity for responsibility is closely related to the age, intellectual state, physical health status, etc. of natural persons, and varies according to the differences in civil, administrative and criminal liability.

3. To constitute the legal liability provided for in this Article, the perpetrator must be subjectively at fault, including intent and negligence, but the main one is intentional. The so-called intentional refers to a subjective state of mind in which the perpetrator hopes or allows the harmful result to occur when he knows that his or her behavior will cause some harmful consequences. The so-called negligence refers to a subjective state of mind in which the perpetrator should have foreseen that his or her actions would cause some kind of harmful consequences but did not foresee it, or that although it was foreseen, it was credulously believed that it could be avoided. Even if there are the above acts, and the perpetrator is not subjectively at fault, he shall not bear legal responsibility.

4. It constitutes legal liability as provided for in this article and does not need to have illegal consequences. As long as the perpetrator objectively commits the aforementioned illegal act and is subjectively at fault, the perpetrator shall bear legal responsibility even if the act did not cause actual damage.

5. The form of legal liability provided for in this Article

The legal liability provided for in this article is administrative. According to the different subjects that bear administrative responsibility, administrative responsibility is divided into administrative responsibility borne by administrative subjects, administrative responsibilities borne by State civil servants, and administrative responsibilities borne by administrative counterparties. From the perspective of the form of administrative responsibility, administrative liability includes compensation for losses, performance of duties, restoration of the right to be damaged, administrative sanctions and administrative penalties. Administrative sanctions refer to the punitive measures given by state administrative organs to civil servants who violate the law and derelict their duties in accordance with their administrative affiliation. According to article 33 of the Interim Regulations on State Civil Servants, there are six forms of administrative sanctions, namely, warning, demerit, major demerit, demotion, dismissal and expulsion. Administrative punishment refers to the sanctions imposed by administrative entities on administrative management counterparts who have violated administrative laws, regulations and rules and have not yet constituted a crime. The types of administrative penalties provided for in the Administrative Punishment Law of the People's Republic of China include: warnings, fines, confiscation of illegal gains, confiscation of illegal property, orders to stop production and business, temporary suspension or revocation of licenses, temporary withholding or revocation of permits, administrative detention, and other administrative penalties provided for by laws and regulations.

The forms of administrative legal liability provided for in this article are:

1. Order correction within a time limit. Ordering correction within a time limit is a specific means to realize the remedial function of administrative punishment, and is a measure for administrative organs to require the offending party to correct the illegal state. The aim is to require the offending party to restore the wrongful state to a lawful state. The order for correction within a time limit provided for in this article refers to the relevant administrative supervision department requiring the project unit with the above-mentioned illegal acts to correct its behavior of circumventing bidding within a certain period of time and bidding for projects subject to compulsory bidding, so as to eliminate the adverse effects or adverse consequences caused by the evasion of bidding.

2. Fines. Fines refer to an economic punishment imposed by administrative organs on individuals or organizations that violate administrative laws and norms and fail to perform their legally prescribed obligations, which is to make individuals and organizations bear new monetary payment obligations. The fine must be a major act, and the penalty organ must make a formal written decision, clearly stipulate the amount of the fine and the time limit for payment in accordance with the law, and give the fined person the right to appeal and file a lawsuit in accordance with the regulations. Fines are different from fines: the former is a type of additional punishment in the punishment and can only be imposed by the people's court. According to the provisions of this article, in addition to making corrections within a time limit, the administrative supervision department may also impose a fine of not less than 5/1000 to 10/1000 of the project contract amount on the project unit that has committed the above-mentioned illegal acts. The so-called fine can be imposed means that for the perpetrator of the violation, the relevant administrative supervision department may decide whether to give a fine according to the severity of the circumstances. In layman's terms, it means that fines may or may not be imposed, and the relevant administrative supervision departments enjoy discretion.

3. For projects that use state-owned funds in whole or in part, the implementation of the project may be suspended or the allocation of funds may be suspended. The premise of suspending the implementation of the project or suspending the allocation of funds is that the project must use state-owned funds in whole or in part, and the suspension of disbursement can only be state-owned funds, so as to prompt the project unit to correct its illegal acts.

4. Sanctions. Sanctions include administrative and disciplinary sanctions. The object of administrative sanctions is the supervisor and other directly responsible personnel directly responsible for the project unit. The types of administrative sanctions include warnings, demerits, major demerits, demotions, demotions, expulsions, and so forth. The relevant administrative supervision departments may make different administrative punishment decisions based on the seriousness of the circumstances of the illegal conduct.

Disciplinary punishment refers to punitive measures given by relevant social organizations to members who violate their internal rules and regulations. If the responsible person is a party member, the corresponding party disciplinary punishment (warning, expulsion from the party, etc.) is given; the responsible person is a member of the relevant industry association, and the association can give him the punishment of lowering the qualification level according to the actual situation. Disciplinary action and legal liability are two different concepts. The former violates the internal rules and regulations of social organizations, while the latter violates the laws and regulations of the state; secondly, disciplinary punishment is not backed by the coercive power of the state, while legal responsibility is backed by the coercive power of the state.

Article 50 Where a bidding agency violates the provisions of this Law by divulging the circumstances and materials related to bidding and bidding activities that should be kept confidential, or colludes with bidders or bidders to harm the interests of the State, the societal public interest, or the lawful rights and interests of others, it shall be fined not less than 50,000 yuan but not more than 250,000 yuan, and the supervisors and other directly responsible personnel directly responsible for the unit shall be fined not less than 5 percent but not more than 10 percent of the amount; Suspension or even cancellation of bidding agency qualifications; where a crime is constituted, criminal responsibility shall be pursued in accordance with law. Whoever causes losses to others shall bear the liability for compensation in accordance with law.

Where the acts listed in the preceding paragraph affect the outcome of the winning bid, the winning bid shall be invalid.

【Interpretation】The provisions of this article are the legal liability of the bidding agency for its illegal acts.

First, the illegal acts of the tendering agency provided for in this article

1. Violating the provisions of this Law by divulging circumstances and materials related to bidding and bidding activities that should be kept confidential. Article 22 of this Law stipulates that the tenderer shall not disclose to others the name and number of potential bidders who have obtained the solicitation documents and other circumstances related to tendering and bidding that may affect fair competition. If the bidder has a bid base, the bid base must be kept confidential. Article 38 stipulates that the tenderer shall take the necessary measures to ensure that the evaluation of bids is carried out in strict confidentiality. Article 44 stipulates that members of the bid evaluation committee and relevant staff involved in the evaluation of bids shall not disclose the evaluation and comparison of bidding documents, the recommendation of successful candidates and other information related to bid evaluation. The tendering agency shall, when it is the agent of the tenderer, directly participate in and organize the tendering and bidding activities, so the above requirements of this Law for the tenderers and members of the bid evaluation committee also apply to the tendering agency. If a bidding agency discloses the circumstances and materials related to bidding and bidding activities that should be kept confidential, it will affect the bidders' fair competition and fail to achieve the purpose of bidding.

2. Violating the provisions of this Law by colluding with bidders or bidders to harm the interests of the State, the societal public interest, or the lawful rights and interests of others. In the bidding agency activities, the relationship between the bidding agency and the bidder is the relationship between the agent and the principal, and the bidding agency is in the position of the agent. Paragraph 2 of article 66 of the General Principles of the Civil Law stipulates that if an agent colludes with a third party to harm the interests of the principal, the agent and the third party shall bear joint and several liability. Article 67 stipulates that if the agent knows that the matter entrusted to the agent is illegal and still carries out the agency activities, or the principal knows that the agent's act of agency is illegal and does not object, the principal and the agent shall bear joint and several liability. In addition, in compulsory bidding projects, since a considerable part of the funds come from government financial investment, there will also be cases where agents and principals, that is, bidding agencies and bidders collude with each other to harm national interests.

Second, the subject of legal liability provided for in this article is the tendering agency, the directly responsible supervisor of the tendering agency and other directly responsible personnel.

Third, to constitute legal liability under this article, the perpetrator should be subjectively at fault, including intent and negligence. In the case of collusion with bidders or bidders to harm the interests of the State, the societal public interest, or the lawful rights and interests of others, the perpetrator should subjectively have the intention to commit the illegal act. The intention referred to here means that the perpetrator has sufficient knowledge or understanding of the purpose and consequences of the act, and does not mean that the actor knows that his act is illegal.

Fourth, it constitutes legal liability under this article and does not require that the illegal act cause actual damage consequences. As long as the perpetrator commits the aforementioned illegal act and proves that he is subjectively at fault, the actor shall bear legal responsibility.

Fifth, the form of legal liability provided for in this article

1. Fines. For bidding agencies that have illegal acts provided for in this article, the relevant administrative supervision departments shall impose a fine of between 50,000 and 250,000 yuan, and the directly responsible supervisors and other directly responsible personnel of the unit shall be fined not less than 5% but not more than 10% of the amount of the unit fine;

2. Confiscation of illegal gains shall also be imposed. Confiscation of illegal gains is a punishment method carried out by an administrative entity that collects part or all of the illegal income, articles or other illegally possessed financial possessions of the administrative offender into the ownership of the State. Confiscation may be decided, depending on the gravity of the circumstances, in part or in its entirety. Confiscated articles, with the exception of those which shall be destroyed and archived for future reference, shall be handed over to the State Treasury or handed over to the statutory special authorities for disposal. Confiscation of unlawful gains is different from the confiscation of property in criminal law. Confiscation of property is a penalty in which part or all of the property owned by an individual criminal is forcibly and uncompromisedly returned to the state. The difference between the two is mainly manifested in: First, the nature is different. Confiscation of property is a criminal punishment, confiscation of illegal gains is an administrative punishment, not a legal consequence of criminal punishment; Confiscation of property is limited to the personal property of criminals, while the object of confiscation of illegal gains is illegal income such as stolen money and stolen property; Confiscation of property mainly applies to criminal acts, and the confiscation of illegal gains can be applied to both general administrative violations and serious administrative violations According to the provisions of this article, if the bidding agency has illegal gains due to the above-mentioned illegal acts, the relevant administrative supervision departments shall also confiscate the illegal gains. Concurrent punishment is a concept as opposed to a single place, which means that the administrative subject applies two or more administrative punishment methods to a certain illegal act of the other party in accordance with the law. Specifically to this article, it means that the relevant administrative supervision departments shall, while imposing fines on the perpetrators of illegal gains, confiscate their illegal gains into the ownership of the State.

3. Pursue criminal responsibility in accordance with law. Criminal liability refers to the criminal sanctions provided for in the criminal law, applicable to persons who violate the criminal law and guaranteed by the coercive power of the State. The assumption of criminal responsibility presupposes that the perpetrator's conduct constitutes a crime. According to article 13 of the Criminal Law of the People's Republic of China, a crime refers to any crime that endangers national sovereignty, territorial integrity and security, splits the country, subverts the regime of the people's democratic dictatorship, overthrows the socialist system, undermines social order and economic order, infringes on state-owned property or property collectively owned by the working masses, infringes on the property owned by citizens' private ownership, infringes on citizens' personal rights, democratic rights and other rights, and other acts that endanger society, and is punishable by criminal punishment in accordance with the law. However, if the circumstances are obvious and minor, the harm is not large, and it is not considered a crime. Crimes have certain social harm, criminal illegality and punishable nature. Where a bidding agency violates the provisions of this Law and constitutes a crime, it shall be investigated for criminal liability in accordance with law. According to the provisions of the Criminal Law, where a unit commits a crime, it shall be fined, and the supervisors and other directly responsible personnel of the unit shall be punished accordingly, that is, the dual punishment system shall be implemented.

4. Suspension or cancellation of bidding agent qualifications. Suspension or cancellation of bidding agency qualifications is an act penalty, that is, a penalty measure that restricts or deprives the offender of a certain capacity or qualification, sometimes referred to as a capable penalty. According to the provisions of this Law, bidding agencies engaged in bidding agency business shall have corresponding qualifications, and bidding agencies without corresponding qualifications cannot engage in relevant bidding agency business. Article 14 of this Law stipulates that the qualifications of bidding agencies engaged in the bidding business of engineering construction projects shall be determined by the Competent Administrative Department of Construction under the State Council or the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government, and the specific measures shall be formulated by the competent administrative department for construction under the State Council in conjunction with the relevant departments of the State Council. The competent department for the qualification determination of bidding agencies engaged in other bidding agency business shall be prescribed by the State Council. According to the provisions of this article, if the conduct of the bidding agency in disclosing the content that should be kept confidential or the collusive conduct is serious, the relevant administrative supervision department shall suspend or even cancel its qualification as a bidding agent. The "serious circumstances" referred to here refer to situations such as serious harmful consequences caused by the perpetrator's conduct and the bad nature of the illegal act. Suspension of bidding agency qualifications refers to the suspension of the bidding agency qualifications of the bidding agency within a certain period of time by the relevant administrative supervision department, during which the bidding agency whose bidding agency qualification has been suspended has lost the qualification of the bidding agent and cannot handle the bidding agency business, and will resume the bidding agency qualification after correcting its illegal behavior. Where the illegal conduct of the bidding agency is serious, and the suspension of the bidding qualification is not sufficient to achieve the purpose of sanctions, the relevant administrative supervision department shall cancel its bidding agency qualifications. Tender agencies that have been disqualified from tendering agents will never be able to engage in tendering agency business.

5. Damages. Damages refer to the civil liability of one party to compensate the other party for damages caused to the other party due to tortious acts or non-performance of obligations, including damages for infringement and damages for breach of contract. The former falls under the category of tort liability, while the latter falls within the category of liability for breach of contract. The significance of distinguishing between damages for breach of contract and damages for infringement is that: First, the scope of compensation is different, the damages of infringement can include compensation for moral damage, while the damages for breach of contract generally only include compensation for property damage, excluding compensation for moral damage; secondly, the burden of proof is different, according to the provisions of the Contract Law, the liability for breach of contract implements no-fault liability, as long as the breach of contract of the actor causes losses to the other party, the actor should bear civil liability. The breaching party is not required to prove the fault of the breaching party. On the contrary, since tort liability generally implements fault liability, if the victim wants to make the infringer liable, he must prove that the infringer was at fault at the time of committing the tortious act, otherwise the perpetrator does not bear legal liability.

Whether the above-mentioned illegal acts of the bidding agency are tortious acts or breaches of contract need to be specifically analyzed: the acts of the bidding agency in disclosing the circumstances or materials related to the bidding activities that should be kept confidential, as well as the acts of colluding with the bidders to harm the interests of the state or a third party, are of course tortious acts, and the compensation liability arising therefrom is tort liability; the acts of the bidding agency colluding with the bidders to harm the interests of the state, the social public interest or the legitimate rights and interests of others have the dual nature of breach of contract and tortious acts. The reason is that, on the one hand, the collusion between the bidding agency and the bidder violates the obligations stipulated in the entrustment agency contract reached between the bidding agency and the bidder; on the other hand, the collusion between the bidding agency and the bidder has the consequence of infringing on the personal and property rights and interests of the other party. The resulting liability for compensation is both tort liability and breach of contract liability, resulting in a competition between tort liability and breach of contract liability. Article 122 of the Contract Law stipulates that if the breach of contract of one party infringes on the personal or property rights and interests of the other party, the injured party has the right to choose to require it to bear the liability for breach of contract in accordance with this Law or to require it to bear tort liability in accordance with other laws.

To constitute liability under this article, it must be that the conduct of the actor caused loss to others. The "others" referred to here include bidders, bidders, third parties, and also the national and social public interests.

Sixth, declare the winning bid invalid

If the above-mentioned illegal acts of the bidding agency affect the outcome of the winning bid, the relevant authority may declare the winning bid invalid. The so-called invalidity of the winning bid means that the final decision of the bidder is not legally binding.

1. The premise of declaring the winning bid invalid. The premise of declaring the winning bid invalid is that the illegal act of the bidding agency affects the outcome of the winning bid. The so-called influence on the winning bid results refers to the fact that the act of the bidding agency leaking the circumstances or materials related to the bidding activities that should be kept confidential has caused the disappearance of the basis for equal competition between the bidders, and the collusion between the bidding agency and the bidders and bidders has made the bidding form and lost the significance of the bidding; the contract has been awarded to the bidder who should not have won the bid or the bidder who should have won the bid failed to win the bid.

2. Legal consequences of invalidation of winning bids. In the case that the tenderer has not signed a written contract with the successful bidder, the notice of winning the bid issued by the tenderer loses its legal binding force, the tenderer has no obligation to sign the contract with the successful bidder, and the successful bidder loses the right to sign the contract with the tenderer.

If a written contract has been signed between the parties, the signed contract shall be invalid. According to the Provisions of the General Principles of the Civil Law and the Contract Law, the invalidity of a contract has the following consequences:

(1) Restitution; the so-called invalidity of the winning bid is in fact the invalidity of the contract concluded between the bidder and the bidder in accordance with the bidding procedure after the conclusion of the contract. According to the provisions of the Contract Law, an invalid contract is not legally binding from the outset. Property acquired as a result of the contract shall be returned; if it cannot be returned or is not necessary, it shall be compensated at a discounted price.

(2) Compensation for losses. The party at fault shall compensate the other party for the losses suffered as a result, and if both parties are at fault, they shall each bear corresponding responsibility. Specific to the provisions of this Article, if the winning bid is invalid because of the illegal conduct of the bidding agency, the bidding agency shall compensate the bidder or the bidder for the losses suffered as a result. If the bidder or bidder is also at fault, each bears the corresponding responsibility. According to the provisions of the General Principles of Civil Law, if the tenderer knows that the tendering agency is engaged in illegal acts and does not object, it shall bear joint and several liability to the third party together with the tendering agency.

(3) Re-determination of the successful bidder or re-bidding. Article 64 of this Law stipulates that if a project that must be tendered according to law violates the provisions of this Law and the winning bid is invalid, the winning bidder shall be re-determined from among the remaining bidders or re-tendered in accordance with this Law in accordance with the conditions for winning the bid stipulated in this Law.

Article 51 Where a bidder restricts or excludes potential bidders with unreasonable conditions, discriminates against potential bidders, compulsorily requires bidders to form a consortium to bid jointly, or restricts competition between bidders, he shall be ordered to make corrections and may be fined not less than 10,000 yuan but not more than 50,000 yuan.

【Interpretation】The provisions of this article are the legal liability of the bidder for its illegal acts of restricting or excluding bidding competition.

First, the illegal acts provided for in this article

1. Restrict or exclude potential bidders on unreasonable terms. In order to enable the bidder to successfully complete the bidding project after winning the bid, the bidder often conducts a qualification review of the bidder when conducting the bidding, that is, the bidder's qualifications, past performance, capital situation, reputation and other aspects are reviewed. In tendering practice, prequalification is an effective method because it exempts bidders who do not have the opportunity to be awarded a contract from the cost of preparing tenders; However, qualification examination is also often used by bidders as a means for bidders to restrict or exclude potential bidders. In order to achieve the purpose of excluding or restricting potential bidders, tenderers often put forward unreasonable conditions or requirements in the prequalification documents, so that some potential bidders lose the opportunity to participate in the bidding. In addition, solicitation documents may also be abused by tenderers for the purpose of restricting or excluding potential bidders. In view of this, article 18, paragraph 2, of this Law stipulates that tenderers may not restrict or exclude potential bidders on unreasonable terms and may not discriminate against potential bidders. Because the solicitation's restriction or exclusion of potential bidders deprives potential bidders of the opportunity to participate in bidding competition, which is contrary to the principles of fairness and impartiality provided for in this Law, it should be prohibited.

2. Discriminatory treatment of potential bidders. Article 5 of this Law stipulates that bidding and bidding activities shall follow the principles of openness, fairness, impartiality and good faith. Article 18, paragraph 2, also provides that tenderers may not discriminate against potential bidders. In practice, there may be discriminatory treatment for potential bidders: preferential treatment of a certain product or equipment on the bidding price, and suppliers who are explicitly or implicitly selected under the same conditions. The discriminatory treatment of potential bidders by tenderers clearly violates the basic principles of the Law on Tendering and Bidding and the prohibitions of the law, and should therefore be prohibited.

3. It is mandatory for bidders to form a consortium to bid jointly. Article 31, paragraph 1, of this Law stipulates that two or more legal persons or other organizations may form a consortium to bid jointly as a bidder. Bidding for the formation of a consortium can concentrate the different advantages of each legal person or organization in the consortium and increase the likelihood of winning the bid. However, the bidding for the formation of the consortium must be voluntary of each bidder, and the bidders shall not be compelled to require the bidders to form a consortium to bid together in order to prevent the phenomenon of "pulling the lang match". Since the bidders who form the consortium shall be jointly and severally liable to the bidders for the winning project, there is a strong relationship of trust between the bidders who form the consortium. On the one hand, the compulsory formation of a consortium violates the principle of voluntariness of the parties, especially in the case of unfamiliarity between the parties; on the other hand, since the law requires that the bidders forming the consortium must have the corresponding ability to undertake the bidding project, the compulsory formation of the consortium will reduce the number of bidders, limit and reduce the competition between bidders, and achieve the purpose of promoting competition through bidding. Therefore, paragraph 3 of article 31 of this law stipulates that bidders may not force bidders to form a consortium to bid jointly.

4. Restrict competition between bidders. An important feature of the bidding system is to achieve the purpose of saving funds and improving the quality of procurement through full and effective competition. The practice of bidders controlling the number of bidders and artificially creating inequalities in competition among bidders seriously hampered the achievement of these objectives. In practice, in addition to forcing bidders to form a consortium to conduct bidding, bidders may also use the following means to restrict competition among bidders: dismember the bidding project and "distribute" among the various bidders; deliberately limit the scope of publication of bidding information so that potential bidders cannot know the bidding information; unreasonably raise the technical specifications or stipulate that only a small number of bidders can meet the requirements.

Second, the subject of legal liability provided for in this article is the tenderer, that is, the legal person or other organization that proposes the tender project in accordance with the provisions of this Law and conducts the tender.

Third, to constitute the legal liability provided for in this article, the perpetrator must subjectively have intention, and negligence cannot constitute the legal liability provided for in this article.

Fourth, it constitutes legal liability as provided for in this article and does not need to have illegal consequences. As long as the tenderer objectively has the above-mentioned illegal acts and subjectively has intention, it shall bear the legal liability provided for in this article.

Fifth, the form of legal liability provided for in this article

1. Order corrections. Where the administrative supervision department discovers that the bidder restricts or excludes potential bidders with unreasonable conditions, discriminates against potential bidders, and compulsorily requires bidders to form a consortium to bid jointly, or restricts competition between bidders, it shall order them to make corrections within a certain period of time, so that potential bidders have the opportunity to participate in bidding or can compete on an equal footing with other bidders.

2. Fines. Where the bidder commits the above-mentioned illegal acts, the relevant administrative supervision department may impose a fine on him. "May" a fine means that the relevant administrative supervision department may or may not impose a fine, depending on the circumstances of the law enforcement body. Where the amount of the fine is between 10,000 and 50,000 yuan, and the circumstances of the illegal conduct are serious, a heavier fine shall be imposed, and where the illegal circumstances are less serious, a smaller fine shall be imposed. In short, the result of the punishment should be commensurate with the violation.

Article 52 Where a tenderer for a project that must be tendered in accordance with law discloses to others the name, number, or other circumstances related to tendering and bidding that may affect fair competition, or leaks the bidding floor, a warning may be given and a fine of not less than 10,000 yuan but not more than 100,000 yuan may be imposed; the directly responsible supervisors and other directly responsible personnel of the unit shall be punished in accordance with law; and where a crime is constituted, criminal responsibility shall be pursued in accordance with law.

Where the acts listed in the preceding paragraph affect the outcome of the winning bid, the winning bid shall be invalid.

【Interpretation】The provisions of this article refer to the legal liability of the tenderer for its act of leaking circumstances that may affect fair competition and the act of leaking the bid base.

First, the illegal acts provided for in this article

1. Disclose to others the name, number of potential bidders who have obtained solicitation documents or other circumstances related to tendering and bidding that may affect fair competition. The confidentiality of the circumstances during the tendering process is a code of conduct that the tenderer must follow. According to article 22 of this Law, the names, quantities, etc. of potential bidders who have obtained the solicitation documents are confidential and the bidders shall not disclose them to others. In addition, any other circumstances that may affect fair competition, such as the composition of the evaluation committee, shall not be disclosed to others. If the tenderer commits the above-mentioned acts in violation of the provisions of this Law, it shall constitute an offence.

2. Leak the bottom of the standard. In the tendering process for some projects, the tenderer may have a bid floor. The practice of setting up a bidding base is a measure taken in view of the current development of China's construction market and national conditions, and is a concrete manifestation of the bidding system with Chinese characteristics. The bid base is confidential before the opening of bids and may not be disclosed by any person. In the process of practical operation, the bidder generally uses the bid base as a benchmark for measuring the bid price, and the bid that is too high or lower than the bid base will be rejected. Therefore, in order to win the bid as much as possible, bidders will often try their best to inquire about the bottom of the bid. There was once a case where when calculating the bid base, the bidder mistakenly wrote the bid base amount that was originally 780-8 million yuan as 780-800,000 yuan. Of the three tenders received, only one person had a bid price between $780,000 and $800,000, and the remaining two bidders were all much higher than $800,000. Subsequently, the tenderer requested that the tender be declared invalid on the grounds that the bid base was incorrect. We do not consider whether the tenderer can declare the tender invalid on the grounds that the bid is incorrect. Assuming that the bidding offers of each bidder are measured strictly according to the bid floor, it is crucial that the bidders limit their bids to the range of the bid floor. In this case, we can conclude from common sense that there is a possibility that the bid base formulated by the bidder may be leaked. It is precisely in consideration of the actual role of the bid base in the bidding and the possible adverse consequences of its disclosure that article 22, paragraph 2 of this law stipulates that if the bidder has a bid base, the bid base must be kept confidential. The act of leaking the bid base is of course an offence.

Second, the subject of legal liability provided for in this article may be either the bidder who must carry out the bidding project according to law, or the staff of the bidding unit, including the main responsible supervisor and other directly responsible personnel.

Third, constituting the legal liability provided for in this article, the perpetrator generally has subjective intent to violate the law and, in some cases, may also be negligent.

Fourth, it constitutes legal liability under this article and does not require actual damage consequences. As long as the perpetrator objectively committed the illegal act and has subjective fault, he shall bear legal responsibility.

Fifth, the form of legal liability provided for in this article

1. Warning. A warning is a written form of condemnation and admonition by an administrative subject against a violator. It is both educational and sanctioning in nature and is designed to alert offenders to declare that the perpetrator's conduct has been violated and to avoid its recurrence. Warnings generally apply to violations of the law that are minor or do not constitute actual harmful consequences. In addition, it can be both single and co-located. Theoretically, warnings belong to the punishment of reprimands, and their characteristics are: punishment is a spiritual punishment of individuals and organizations, and does not involve the substantive rights of individuals and organizations like other types of punishments; the purpose of applying for punishment is generally before other punishments, and the purpose of applying for punishment is to arouse the ideological vigilance of the offender, so that he will no longer violate the law in the future. The warning ruling must be announced to and sent to me, and a copy of the ruling must be handed over to the unit where the person being punished belongs and the police station where he or she is stationed. Verbal warnings are not administrative punishments, but merely criticism of the way education is conducted.

Specific to the legal liability provided for in this article, a warning refers to a written condemnation and admonition imposed by the relevant administrative supervision department on the bidder who has committed the above-mentioned illegal acts or the main responsible supervisor and other directly responsible personnel of the bidding unit.

2. May also be fined. According to the provisions of this article, where the perpetrator commits the above-mentioned illegal acts, the relevant administrative supervision departments may also impose a fine on him, and the amount of the fine shall be between 10,000 and 100,000 yuan.

3. Sanctions are given. The object of administrative sanctions is the supervisor and other directly responsible personnel directly responsible for the project unit. The types of administrative sanctions include warnings, demerits, major demerits, demotions, demotions, expulsions, and so forth. Relevant administrative supervision departments shall make different administrative punishment decisions based on the seriousness of the illegal conduct. Disciplinary punishment refers to punitive measures given by relevant social organizations to members who violate their internal rules and regulations. If the responsible person is a party member, the corresponding party disciplinary punishment (warning, expulsion from the party, etc.); the responsible person is a member of the relevant industry association, and the association can give him a sanction of lowering the qualification level according to the actual situation.

4. Pursue criminal responsibility. Where the perpetrator's unlawful conduct violates the criminal law and has a considerable degree of social harm and is punishable by criminal punishment, the judicial organs shall pursue criminal responsibility in accordance with law. Where a unit commits a crime, a fine shall be imposed on the unit, and the relevant supervisors and other directly responsible personnel shall be punished with corresponding criminal punishments, that is, a double punishment system shall be implemented.

Sixth, the winning bid is invalid

The premise of the invalidity of the winning bid must be that the tenderer's act of divulging the circumstances or information that should be kept confidential is sufficient to affect the outcome of the winning bid, such as the illegal conduct of the tenderer has caused the disappearance of the basis for equal competition between the bidders;

If the tenderer and the successful bidder have signed a written contract, the contract shall be invalid. According to the provisions of the Contract Law, if the contract is invalid, it shall be restored to the original state, and the party at fault shall compensate the other party for the losses suffered as a result, and if both parties are at fault, they shall bear corresponding responsibilities. Where losses are caused to others as a result of the above-mentioned illegal acts, compensation shall also be made for the losses of others. If the tenderer and the successful bidder have not signed a written contract, the notice of winning the bid issued by the tenderer shall be invalid, that is, it shall lose its legal binding force. The tenderer is no longer obliged to sign a written contract with the successful bidder, and the successful bidder loses the right to sign a written agreement with the tenderer.

Article 64 of this Law stipulates that if a project that must be tendered according to law violates the provisions of this Law and the winning bid is invalid, the winning bidder shall be re-determined from among the remaining bidders or re-tendered in accordance with this Law in accordance with the conditions for winning the bid stipulated in this Law.

Article 53 Where bidders collude with each other in bidding or collude with bidders to bid, the bidders seek to win the bid by paying bribes to the bidders or members of the bid evaluation committee, and the winning bid is invalid, and a fine of not less than 5/1000 to 10/1000 of the amount of the winning project shall be imposed, and a fine of not less than 5% but not more than 10% of the amount of the unit shall be imposed on the directly responsible supervisors and other directly responsible personnel of the unit; The bidding qualifications for projects that must be tendered according to law within one to two years shall be cancelled and announced until the business license is revoked by the administrative organ for industry and commerce; Whoever causes losses to others shall bear the liability for compensation in accordance with law.

【Interpretation】The provisions of this article stipulate the legal liability for collusion in bidding and for the illegal act of bribery in order to win the bid.

First, the illegal acts provided for in this article

1. Bidders collude with each other to bid. Collusion between bidders in bidding often occurs in practice, and collusion in bidding is manifested in the form of agreements between bidders and the rotation of winning bids. Collusion in bidding limits competition and renders tendering formalities. Therefore, article 32 of this Law stipulates that bidders may not collude with each other in bidding.

2. Bidders collude with bidders in bidding. Since most of the funds for projects that must be tendered come from state investment or loans from foreign governments or international organizations, in practice, in addition to the collusion of bidders to obtain contracts, in some cases, there is also the possibility of bidders and bidders colluding with each other to harm the national interest or the public interest. The collusion between bidders and bidders in bidding will damage the legal rights of other bidders on the one hand, and harm the national or social public interest on the other hand. Because of this, article 32 of this law clearly stipulates that bidders may not collude with bidders to harm the interests of the State, the societal public interest or the lawful rights and interests of others.

3. Bidders pay bribes to win the bid.

Second, the subjects of legal liability provided for in this article include bidders, bidders, as well as bidders, the principal responsible persons of bidders' units and other directly responsible personnel.

Third, to constitute legal liability under this article, the perpetrator must subjectively have the intention to commit the illegal act, that is, the perpetrator has a full knowledge or understanding of the purpose and nature of the act.

Fourth, it constitutes legal liability under this article and does not require actual damage consequences. As long as the perpetrator objectively has the illegal acts provided for in the foregoing and is subjectively at fault, the perpetrator shall bear legal responsibility.

Fifth, the form of legal liability provided for in this article

1. Fines. For acts of collusion in bidding, the relevant administrative supervision departments shall impose a fine of not less than 5/1000 to 10/1000 of the amount of the winning project on the bidders and bidders. The supervisors and other directly responsible personnel of the unit shall be fined not less than 5% but not more than 10% of the amount of the fine. The so-called "should" means that the relevant administrative supervision department only enjoys the discretion to decide the specific amount of the fine within the range of punishment prescribed by law, but does not have the discretion to decide whether to impose a fine, as long as the perpetrator has the above-mentioned illegal acts, the relevant administrative supervision department shall impose a fine on him.

2. Confiscation of illegal gains shall also be imposed. Confiscation of illegal gains is a punishment method carried out by an administrative entity that collects some or all of the illegal income, articles, or other illegally possessed property of the person who commits an administrative offense into the ownership of the state. Confiscation may be decided, depending on the gravity of the circumstances, in part or in its entirety. Confiscated articles, with the exception of those which shall be destroyed and archived for future reference, shall be handed over to the State Treasury or handed over to the statutory special authorities for disposal. Confiscation of unlawful gains is different from the confiscation of property in criminal law. Confiscation of property is a penalty in which part or all of the property owned by an individual criminal is forcibly and uncompromisedly returned to the state.

According to the provisions of this article, the premise that the relevant administrative supervision departments shall also confiscate the illegal gains against the offender is that the perpetrator has obtained illegal benefits as a result of committing the aforementioned illegal acts.

3. Disqualify the bidder from bidding. Disqualification from bidding is an act penalty, that is, a penalty measure that restricts or deprives the offender of a certain capacity or qualification, sometimes referred to as a capable penalty. In accordance with the provisions of this article, if the circumstances of a bidder's above-mentioned illegal conduct are serious, the relevant administrative supervision department shall revoke his bidding qualifications for participating in the bidding projects that must be tendered according to law within one to two years and make a public announcement. Whether the perpetrator's illegal conduct is a serious circumstance shall be judged from the aspects of the harmful consequences caused by the illegal act, the nature of the illegal act, and the means used to carry out the illegal act. Bidders who have been disqualified from bidding shall not be able to participate in the bidding of projects that must be tendered according to law within the time limit specified by the relevant administrative supervision department. In addition, it should be pointed out that the bidder's bidding qualifications are limited to projects that must be tendered according to law, and there should be no doubt whether the bidder can participate in the bidding of non-mandatory bidding projects. After the specified period of time has elapsed, the bidding qualifications of the disqualified bidders to participate in the compulsory bidding project shall be reinstated.

4. Revocation of business license. In the case of serious circumstances, the administrative organ for industry and commerce shall revoke the business license of the bidder who colluded in bidding. The so-called serious circumstances refer to the situation that the bidder's bidding qualification to participate in the compulsory bidding project within a certain period of time is not enough to achieve the purpose of the sanction. In this case, it is necessary to fundamentally abolish the perpetrator's capacity to act. Compared with the cancellation of the bidder's bidding qualification for a certain period of time, the penalty of revoking the business license is more severe, and it is the cancellation of the bidder's qualification to engage in business activities.

5. Pursue criminal responsibility. Where the circumstances of collusion in bidding seriously constitute a crime, the criminal responsibility of the offender shall be pursued in accordance with law. Where a unit commits a crime, it shall be fined, and the directly responsible supervisors and other directly responsible personnel shall be punished accordingly.

6. Compensation for Losses. Where collusion in bidding causes losses to others, it shall also bear the liability for compensation in accordance with law. The loss here is only a property loss and does not include moral damage. The so-called moral damage refers to the civil legal system in which a civil subject, because his personal rights have been unlawfully infringed, his personality and identity interests have been damaged or suffered mental suffering, requiring the infringer to provide relief and protection through property compensation and other methods. Since in bidding activities, the losses suffered by the victims due to collusive bidding are mostly property losses and do not include moral losses, the scope of damages should be limited to compensation for property damage.

In addition, the property loss referred to here includes both direct losses, such as the cost of re-bidding after the winning bid is invalid due to collusive bidding, as well as indirect losses, such as the loss of the opportunity to win the bid due to the collusion of certain bidders, the loss of the expected benefits of the project, etc. Collusion in bidding is not a breach of contract, but should be an act of infringement, so the scope of compensation for losses is not limited by the "rule of reasonable foresight".

Finally, in accordance with the provisions of this article, the object of damages shall be the tenderer who suffered damage as a result of collusive bidding, or a bidder other than a collusive bidder.

Sixth, the winning bid is invalid

If there is collusion between bidders, or between bidders and bidders, the winning bid shall be invalid. The so-called invalid bid means that the winning bid is not legally binding, and the invalidity is invalid from the beginning. Unlike the previous provisions on the invalidity of the winning bid, the invalidity of the winning bid provided for in this article does not have to be premised on the collusive act affecting the result of the winning bid, as long as the actor has committed a collusive act, regardless of whether the act affects the result of the winning bid, the winning bid is invalid. If the tenderer and the successful bidder have signed a written contract, the signed contract shall be invalid. According to the provisions of the Contract Law, if the contract is invalid, it shall be restored to its original state, and the party at fault shall compensate the other party for the losses suffered as a result, and if both parties are at fault, they shall bear corresponding responsibilities. Therefore, if it causes losses to others, it shall also compensate for the losses. If a written contract has not yet been signed, the notice of winning the bid issued by the bidder is invalid, the successful bidder loses the right to sign a written contract with the bidder, and the bidder no longer has the obligation to sign a written contract with the successful bidder.

Article 64 of this Law stipulates that if a project that must be tendered according to law violates the provisions of this Law and the winning bid is invalid, the winning bidder shall be re-determined from among the remaining bidders or re-tendered in accordance with this Law in accordance with the conditions for winning the bid stipulated in this Law.

Article 54 Where a bidder bids in the name of another person or fraudulently deceives the winning bid, the winning bid is invalid, causing losses to the bidder, he shall bear the liability for compensation in accordance with law; if a crime is constituted, criminal responsibility shall be pursued in accordance with law.

Where the bidders of a project that must be tendered in accordance with the law have the acts listed in the preceding paragraph that have not yet constituted a crime, they shall be fined not less than 5/1000 but not more than 10/100 of the amount of the project that wins the bid, and a fine of not less than 5% but not more than 10% of the amount of the unit's fine shall be imposed on the directly responsible supervisors and other directly responsible personnel of the unit; Until the business license is revoked by the administrative authority for industry and commerce.

【Interpretation】The provisions of this article are the legal liability of the bidder for the illegal act of defrauding the winning bid in a false manner.

First, the illegal acts provided for in this article

1. Bidders bid in the name of others. Bidders bidding in the name of others may be due to the following reasons: the bidder does not have the ability to undertake the bidding project; the bidder does not have the qualifications required by the state or required by the bidding documents to engage in the bidding project; the bidder has been revoked by the industrial and commercial organs for illegal acts, or the relevant administrative supervision department has been disqualified from engaging in relevant business within a certain period of time due to illegal acts. Article 26 of this Law stipulates that bidders shall have the ability to undertake bidding projects; if the relevant provisions of the State stipulate the qualifications of bidders or the bidding documents stipulate the qualifications of bidders, the bidders shall have the prescribed qualifications. It is illegal for a bidder to bid in the name of other capable or qualified bidders in the name of other capable or qualified bidders who do not have the ability to undertake the bidding project or does not have the qualifications that should be met.

2. Fraudulently obtaining the winning bid by other means. In addition to bidding in the name of others to defraud the winning bid, the bidder may also deceive and deceive the winning bid in other ways. Such as forging qualification certificates, business licenses, and falsifying the qualification review materials submitted. Article 33 of this Law stipulates that bidders may not bid on bids below the cost, nor may they bid in the name of others or otherwise deceive the winning bid. It is an offence to fraudulently obtain the winning bid in a fraudulent manner in violation of the provisions of this article. Of course, the "other ways" mentioned here are not limited to the cases listed above, but should include all acts of fraudulently obtaining the winning bid.

Second, the subject of legal liability provided for in this article is the bidder and the supervisor and other directly responsible personnel of the bidding unit.

Third, to constitute legal liability under this article, the perpetrator must have the intention to commit the illegal act. The deliberate manifestation of the actor as the actor's conduct has a clear purpose, that is, to win the bid.

Fourth, the form of legal liability provided for in this article

1. Compensation for losses. If the bidder's fraudulent behavior causes losses to the bidder, he shall bear the liability for compensation in accordance with law. In general, the liability of the bidder should be limited to property damage and not include moral damage.

In addition, the scope of compensation for bidders includes both direct and indirect losses. The cost of re-bidding after the former is invalid due to fraudulent bidding. The latter is such as the loss of the expected income of the project. Since the act of defrauding the winning bid is an act of infringement, the scope of damages arising from the act is not limited by the "Reasonable Foresight Rule". According to the provisions of this article, the object of damages shall be the tenderer who has suffered damages as a result of the bidder's fraudulent acquisition of the winning bid.

2. Pursue criminal responsibility in accordance with law. Where the circumstances of the bidder's act of fraudulently obtaining the winning bid constitute a serious crime, the judicial organ shall pursue the criminal liability of the bidder in accordance with law. Where a unit constitutes a crime, it shall be fined, and the directly responsible supervisors and other directly responsible personnel shall be punished accordingly.

3. Fines. This includes fines for bidders and fines for supervisors and other directly responsible personnel who are directly responsible for bidding units. According to the provisions of this article, if a bidder of a project that must be tendered according to law fraudulently obtains the winning bid, the relevant administrative supervision department shall impose a fine of not less than 5 per cent but not more than 10 per cent of the amount of the project winning the bid, and the supervisor and other directly responsible personnel of the winning unit shall be fined not less than 5 per cent but not more than 10 per cent of the amount of the unit fine.

4. Confiscation of illegal gains shall also be imposed. Where bidders who are required to conduct bidding projects in accordance with the law win the bid through fraud and deception and seek illegal benefits from it, in addition to fines, the relevant administrative supervision departments shall also confiscate the illegal gains.

5. Disqualification from bidding. Where the circumstances of the bidders of a project that must be tendered according to law are serious, the relevant administrative supervision department shall revoke his bidding qualifications for participating in the projects that must be tendered according to law within one to three years and make a public announcement. Since the penalty for disqualifying the bidders from participating in compulsory bidding projects within a certain period of time is relatively serious, caution should be exercised when making such penalty decisions. According to the provisions of this article, the premise of canceling the bidding qualifications of illegal bidders to participate in bidding projects that must be carried out according to law is that the bidder's fraudulent bid winning bid is "serious". The so-called serious circumstances refer to the serious consequences caused by the act of defrauding the winning bid, the bidder's repeated deception of the winning bid, and the means of defrauding the winning bid. Bidders who have been disqualified from bidding shall not participate in the bidding of projects that must be tendered according to law within the specified period of time.

In addition, the disqualification of bidding can only be discussed if the illegal bidder actually has the qualification to bid. If the perpetrator fraudulently claims to have bid qualifications in order to defraud the winning bid precisely because he is not qualified to bid, the relevant administrative supervision department can only adopt other punishment methods to achieve the purpose of punishment, and there is no cancellation of bidding qualifications.

6. Revocation of business license. Where the circumstances of the illegal act of a bidder who must be subject to bidding for a project that must be tendered according to law cheat and fraudulently obtain the winning bid are serious, and the cancellation of his bidding qualifications for participating in the compulsory bidding project within a certain period of time is not sufficient to achieve the purpose of sanctions, the administrative organ for industry and commerce shall revoke the bidder's business license. Bidders whose business licenses have been revoked may not engage in any business operations. The premise of revoking the business license is that the bidder has a business license, and if the actor who fraudulently wins the bid does not have a business license at all, then there is no revocation of the business license.

Fifth, the winning bid is invalid

If a bidder fraudulently obtains the winning bid by deception, whether or not the act of defrauding the winning bid affects the outcome of the winning bid, the bid shall be invalid. The so-called invalid bid means that the winning bid is not legally binding, and the invalidity is invalid from the beginning. If the tenderer and the successful bidder have signed a written contract, the signed contract shall be invalid. According to the Contract Law, if the contract is invalid, it shall be restored to its original state, and the at fault bidder shall compensate the other party for the losses suffered as a result. If the contract has not yet been signed, the notice of winning the bid issued by the bidder is invalid, the bidder no longer has the obligation to sign a contract with the bidder, and the successful bidder loses the right to sign a contract with the bidder. Article 64 of this Law stipulates that if a project that must be tendered according to law violates the provisions of this Law and the winning bid is invalid, the winning bidder shall be re-determined from among the remaining bidders or re-tendered in accordance with this Law in accordance with the conditions for winning the bid stipulated in this Law.

Article 55 Where a bidder for a project that must be tendered in accordance with the law violates the provisions of this Law and negotiates with the bidder on the substantive content such as the bidding price and the bidding plan, a warning shall be given, and the directly responsible supervisors and other directly responsible personnel of the unit shall be punished in accordance with law.

Where the acts listed in the preceding paragraph affect the outcome of the winning bid, the winning bid shall be invalid.

【Interpretation】The provisions of this article are the legal responsibilities of the bidder for its illegal negotiation behavior.

First, the illegal acts provided for in this article

According to the provisions of the Contract Law and the theory of contract formation, bidding is a competitive contracting procedure, and the purpose of bidding is to select the best contract counterparty from a large number of bidders. In order to ensure that this choice is fair and equitable, this Law provides that the tenderer must conclude a contract with the successful bidder in accordance with the solicitation documents and the successful bidding documents and shall not negotiate the relevant substantive content. In this way, the process of concluding the contract between the parties and the content of the relevant contract can be placed under the supervision of the public, ensuring that the best bidders can obtain the contract, thus achieving the purpose of preventing fraud.

On the contrary, if the bidders and bidders are allowed to negotiate and negotiate on the substantive contents of the bidding price and bidding plan before the successful bidder is determined, it will run counter to the "three justices" principle and will inevitably make the relevant bidding procedures meaningless. Therefore, article 43 of this law stipulates that before determining the successful bidder, the bidder shall not negotiate with the bidder on the substantive content of the bidding price, bidding plan and so on. Failure to do so constitutes an offence.

Second, from the text used in this article, it is understood that the subject of legal liability provided for in this article is the tenderer who must carry out the bidding project according to law, that is, the legal person or other organization that proposes the bidding project for bidding, and the directly responsible manager or other directly responsible personnel of the bidding unit. Since the act of negotiating the substantive contents of the bidding quotation, the bidding plan and other substantive contents before the bid is won cannot be carried out unilaterally by the bidder, the responsible person should include the bidder.

Third, to constitute legal liability under this article, the perpetrator must have the intention to commit the illegal act. The intention referred to here means that the actor has sufficient knowledge and understanding of the purpose of his act, rather than that the actor knows that his act of negotiating the substance in question is illegal. Even if the perpetrator is unaware that it is unlawful to negotiate on the substance in question, it is considered at fault as long as the perpetrator has a full understanding and awareness of the purpose of his conduct at the time of the negotiation.

Fourth, the form of legal liability provided for in this article

1. Warning. Where a bidder violates the provisions of this article and negotiates with the bidder on the substantive content of the bidding quotation, bidding plan, etc., the relevant administrative supervision department shall give a warning. Specifically for the purposes of this article, a warning refers to a written condemnation and admonition by the relevant administrative supervision department against a person who has committed the above-mentioned violation.

2. Sanctions are given. According to the provisions of this article, the relevant administrative supervision departments shall give administrative sanctions to the directly responsible supervisors and other directly responsible personnel of the unit in accordance with law.

Disciplinary action is a punitive measure taken against internal disciplinary staff in accordance with the articles of association and resolutions of the organization. According to the provisions of this article, in the case that the supervisors and other directly responsible personnel of the project unit are not state civil servants, they shall be disciplined in accordance with the internal regulations of the project unit. If the supervisor of the project unit and other directly responsible personnel are party members, party disciplinary sanctions are given.

Fifth, the winning bid is invalid

According to the provisions of this article, the premise of the invalidity of the winning bid must be the illegal negotiation that affects the result of the winning bid. The so-called impact on the winning bid results refers to the situation in which unqualified bidders win the bid, or the qualified bidder fails to win the bid. The contract signed is invalid if the tenderer and the bidder have already signed a contract. According to the Provisions of the Contract Law, if the contract is invalid, it shall be restored to its original state, and the party at fault shall compensate the other party for the losses suffered as a result, and if both parties are at fault, they shall bear corresponding responsibilities. If the tenderer and the successful bidder do not sign a contract, the notice of winning the bid issued by the bidder is invalid, the bidder no longer has the obligation to sign a contract with the successful bidder, and the successful bidder loses the right to sign a contract with the bidder.

Article 64 of this Law stipulates that if a project that must be tendered according to law violates the provisions of this Law and the winning bid is invalid, the winning bidder shall be re-determined from among the remaining bidders or re-tendered in accordance with this Law in accordance with the conditions for winning the bid stipulated in this Law.

Article 56 Where a member of the bid evaluation committee accepts property or other benefits from a bidder, if the members of the bid evaluation committee or the relevant staff participating in the bid appraisal disclose to others the evaluation and comparison of the bidding documents, the recommendation of the successful candidate, and other circumstances related to the bid evaluation, they shall be given a warning, confiscate the property they have received, and may also impose a fine of not less than 3,000 yuan but not more than 50,000 yuan, and the members of the bid evaluation committee who have committed the illegal acts listed shall be disqualified from serving as members of the bid evaluation committee. They shall no longer participate in the evaluation of bids for any projects that must be tendered in accordance with law; if a crime is constituted, criminal responsibility shall be pursued in accordance with law.

【Interpretation】The provisions of this article are the legal responsibilities that the members of the bid evaluation committee and the relevant staff participating in the bid evaluation shall bear for their illegal acts.

First, the illegal acts provided for in this article

1. The members of the bid evaluation committee accept gifts or other benefits from the bidders. The Bid Evaluation Committee is the working body responsible for the bid evaluation work. In order to ensure the fair conduct of the bid evaluation work, the bid evaluation committee must be in a relatively detached position, therefore, this law stipulates that those who have an interest in the bidder are not allowed to enter the bid evaluation committee of the relevant project, and those who have already entered should be replaced. In the bid evaluation work, the bid evaluation committee shall perform its duties objectively and impartially, abide by professional ethics, and bear personal responsibility for the appraisal opinions put forward. In practice, in order to win the bid, some bidders always try their best to approach and co-opt the members of the bid evaluation committee, and buy off the bid evaluation committee members by giving gifts, providing free travel abroad, and even paying bribes. In this regard, article 44, paragraph 2, of this Law clearly stipulates that members of the bid evaluation committee shall not have private contact with bidders and shall not accept any property or other benefits from bidders.

2. The members of the bid evaluation committee or the relevant staff participating in the bid evaluation disclose to others the evaluation and comparison of the bidding documents, the recommendation of the successful candidate, and other circumstances related to the evaluation of the bid. In order to ensure that the bid evaluation work is carried out objectively and fairly, article 38 of this law stipulates that the bidder shall take the necessary measures to ensure that the bid evaluation is carried out under strict confidentiality. No unit or individual may illegally interfere with or influence the process and results of bid evaluation. In order to prevent the members of the bid evaluation committee from revealing the information about the evaluation of bids, a number of measures have been taken in practice, such as the adoption of isolation measures in accommodation and communication. In view of the actual situation of revealing some information related to bid evaluation that should be kept confidential, article 44, paragraph 3 of this law stipulates that members of the bid evaluation committee and relevant staff participating in the bid evaluation shall not disclose the evaluation and comparison of the bidding documents, the recommendation of the winning candidate, and other circumstances related to the evaluation of the bid. Violation of these Provisions constitutes an offence.

1. Warning. Where members of the bid evaluation committee or relevant staff participating in the bid evaluation have the above-mentioned illegal acts, the relevant administrative supervision department shall give a warning, that is, give a reprimand and condemnation in writing.

2. Confiscation of accepted property. The property accepted by the members of the bid evaluation committee shall be confiscated and returned to the ownership of the State.

3. Fines. Where a member of the bid evaluation committee or a relevant staff member participating in the bid evaluation commits the above-mentioned illegal acts, the relevant administrative supervision department may, on the basis of specific circumstances, impose a fine on him. The amount of the fine shall be between 3,000 and 50,000 yuan, and shall be determined by the relevant administrative supervision department according to the severity of the illegal act. If the punishment measures such as warning and confiscation of gifted property are sufficient to achieve the purpose of sanctioning illegal acts, the fine may not be imposed.

4. Disqualification. For members of the bid evaluation committee who have committed the above-mentioned illegal acts, the relevant administrative supervision department shall disqualify them from serving as members of the bid evaluation committee. A person who has been disqualified from serving as a member of the bid evaluation committee shall be removed from the expert pool established by the state expert pool or the bidding agency, and shall no longer engage in the evaluation of bids for any project that must be tendered according to law, nor shall the bidder hire him or her to serve as a bid evaluation committee.

5. Pursue criminal responsibility in accordance with law. Where the illegal conduct of a member of the bid evaluation committee or a relevant person participating in the bid evaluation work is serious and constitutes a crime, the judicial organ shall pursue criminal responsibility in accordance with the relevant criminal law provisions.

Article 57 Where a bidder determines the winning bidder in addition to the successful candidate recommended by the bid evaluation committee in accordance with law, and the project that must be tendered according to law determines the successful bidder on its own after all bids have been rejected by the bid evaluation committee, the winning bid is invalid, ordered to make corrections, and may be fined not less than 5/1000 of the amount of the winning project; the supervisors and other directly responsible personnel of the unit shall be punished in accordance with law.

【Interpretation】The provisions of this article are the legal responsibility of the tenderer for its illegal act of not determining the successful bidder according to the requirements.

First, the illegal acts provided for in this article

1. The bidder shall determine the successful bidder in addition to the successful candidate recommended by the bid evaluation committee in accordance with law. In accordance with the provisions of this Law, the ultimate purpose of the bid evaluation work of the bid evaluation committee is to recommend qualified successful candidates to the bidders or to directly determine the successful bidders according to the authorization of the bidders, and the bidders can only select the winning bidders among the winning candidates recommended by the bid evaluation committee. The purpose of this provision of the law is to prevent the tenderer from being able to guarantee the fairness of the evaluation result due to human feelings, interests and other reasons. If the tenderer determines the successful bidder in addition to the successful candidate recommended by the bid evaluation committee, it will make the work of the bid evaluation committee meaningless and it will be difficult to ensure the fairness of the results of the bid. In view of this, article 40 of this Law provides that the bidder shall determine the successful bidder on the basis of a written bid evaluation report submitted by the bid evaluation committee and the recommended successful candidate. If a bidder violates the provisions of this Law and determines the successful bidder in addition to the successful candidate recommended by the bid evaluation committee, it shall constitute an offence.

2. Determine the successful bidder after all bids have been rejected by the bid evaluation committee. Article 42 of this Law stipulates that if the bid evaluation committee finds that all bids do not meet the requirements of the solicitation documents after evaluation, it may reject all bids. The rejection of all bids means that there are no qualified bidders, indicating that the bid failed. In order to select the best contract counterparty and achieve the purpose of compulsory bidding prescribed by law, the bidder shall re-bid in accordance with the provisions of this Law, and shall not determine the successful bidder after all bids have been rejected by the bid evaluation committee for the sake of simplicity and cost saving. Otherwise, the bidding will be a formality, which will not realize the value of the bidding system, and will also violate the requirements of the law for compulsory bidding.

Second, the subject of legal liability provided for in this article is the bidder of the project that must be tendered according to law, the directly responsible supervisor of the bidding unit and other directly responsible personnel.

Third, to constitute legal liability under this article, the perpetrator should subjectively have the intention to engage in illegal conduct.

Fourth, the form of legal liability provided for in this article

1. Order corrections. For bidders who have the above-mentioned illegal acts, the relevant administrative supervision departments shall order them to make corrections within a certain period of time, determine the successful bidder among the candidates recommended by the bid evaluation committee, and re-bid the projects that must be tendered according to law in accordance with the provisions of this Law if all bidders are denied by the bid evaluation committee.

2. Fines. For bidders who have committed the above-mentioned illegal acts, the relevant administrative supervision departments may impose a fine of not less than 5/1000 and not more than 10/1000 of the amount of the winning project. Where the bidder corrects the error in a timely manner, the relevant administrative supervision department may not impose a fine.

3. Sanctions are given. Where the directly responsible supervisors and other directly responsible personnel of the bidding unit are State functionaries, the relevant competent organs shall give them administrative sanctions. Depending on the severity of the circumstances, different penalties may be given, such as demerit, major demerit, warning, demotion, demotion, expulsion, etc. Where the directly responsible supervisors and other directly responsible personnel of the bidding unit are not state functionaries, the relevant administrative competent organ shall order the bidding unit to give disciplinary punishment in accordance with internal rules.

Fifth, the winning bid is invalid

In accordance with the provisions of this article, if the bidder determines the successful bidder other than the successful candidate recommended by the bid evaluation committee in accordance with the law, or determines the successful bidder on its own after all bids have been rejected by the bid evaluation committee, the winning bid shall be invalid. In the case where the contract has already been signed, the invalidity of the winning bid is actually the invalidity of the contract, which should be restored in accordance with the Contract Law, and the party at fault should also compensate the other party for the losses suffered. In the case that the contract has not yet been signed, the notice of winning the bid issued by the bidder is invalid, the bidder is no longer obliged to sign the contract with the successful bidder, and the successful bidder loses the right to sign the contract with the bidder.

Article 64 of this Law stipulates that if a project that must be tendered according to law violates the provisions of this Law and the winning bid is invalid, the winning bidder shall be re-determined from among the remaining bidders or re-tendered in accordance with this Law in accordance with the conditions for winning the bid stipulated in this Law.

Article 58 Where the successful bidder transfers the winning project to another person, dismembers the winning project and then separately transfers it to another person, and subcontracts part of the main body or key work of the winning project to another person in violation of the provisions of this Law, or if the subcontractor subcontracts again, the transfer or subcontracting shall be invalid and a fine of not less than 5/1000 but not more than 10/1000 of the amount of the transferred or subcontracted project shall be imposed; where there are illegal gains, the illegal gains shall be confiscated; the business suspension and rectification may be ordered; and if the circumstances are serious, the administrative organ for industry and commerce shall revoke the business license.

【Interpretation】This article stipulates the legal responsibility that the successful bidder shall bear for illegally transferring the winning project, illegally subcontracting the winning project to another person, or subcontracting the subcontractor again.

First, the illegal acts provided for in this article

1. The successful bidder will transfer the winning project to another person. According to the provisions of this Law, the successful bidder's bid must meet one of the following conditions: (1) it can meet the comprehensive evaluation criteria specified in the solicitation documents to the greatest extent possible; The successful bidder selected accordingly can achieve the purpose of saving funds on the one hand, and ensure the quality of the completion of the bidding project on the other hand. If the successful bidder acquires the winning project and then transfers it to another person, it will make the bidding process meaningless. In addition, the contract signed between the bidder and the successful bidder has a strong nature of trust, and the successful bidder should personally perform it, otherwise it constitutes a breach of contract. Finally, for every transfer of the winning project, the actual funds used for the project will be reduced once, which will seriously affect the quality of the tendered project. In view of this, article 48 of this Law stipulates that the tenderer may not transfer the winning project to others. If the successful bidder violates the regulations and transfers the winning project to another person, it constitutes an illegal act.

2. Dismember the winning project and transfer it to others separately. In addition to transferring the winning project package to others, the winning bidder may also dismember the winning project in the form of "retail" and transfer it to others separately, so as to achieve the purpose of profiting from it. Such an act would also render the tender meaningless. Therefore, article 48 of this Law stipulates that the successful bidder shall not separately transfer the winning project to others after dismemberment.

3. Subcontracting part of the main body and key work of the winning project to others in violation of the provisions of this Law. Since the quality of the bidding project depends to a considerable extent on the completion of the main body of the project and the key work, the reason why the bidder selects a bidder as the winning bidder is that in many cases the ability of the successful bidder to complete the main body or key work of the project has been affirmed by the evaluation committee and the bidder. If the successful bidder entrusts the main body and key work of the bidding project to others to complete, it will make the bidding meaningless and it will be difficult to ensure the quality of the project completion. If the successful bidder exceeds the scope permitted by law, it is illegal to subcontract the main body and key work of the winning project to others.

4. The subcontractor subcontracts again. In some cases, it is impractical and unnecessary to require the successful bidder to complete all the work of the tendered project. Sometimes the reason why the bidder selects a bidder as the winning bidder is because the bidder's ability to complete the main body or key work of the bidding project has been affirmed by the bid evaluation committee, and it is not necessarily superior in some non-main and non-key aspects. Therefore, this Law allows the successful bidder to subcontract certain non-main and non-critical work to a person with the corresponding qualifications and conditions on the premise of obtaining the consent of the bidder. Allowing the successful bidder to subcontract the non-main and non-critical work of the winning project to a person with qualification conditions can give full play to the advantages of multiple parties and better complete the winning project. However, the subcontractor should not subcontract the subcontracted project, otherwise it will cause the project funds to be exploited layer by layer, and ultimately affect the quality of the project. Therefore, article 48 of this law stipulates that the successful bidder, with the consent of the bidder, may subcontract part of the non-main and non-key work to a person with corresponding qualifications. However, the person who obtains the subcontract may not subcontract again.

In recent years, many quality problems in the field of infrastructure construction have been caused by layers of transfer or subcontracting, which have caused serious harm to the interests of the state and the safety of people's lives and property. Therefore, the transfer and subcontracting of layers must be strictly prohibited.

Second, the subject of legal liability provided for in this article is the successful bidder and the subcontractor who has obtained the subcontracted project in accordance with the law.

Third, to constitute legal liability under this article, the perpetrator must subjectively have the intention to commit the illegal act, that is, have a full knowledge or understanding of the act of transferring or subcontracting.

Fourth, the legal liability provided for in this article is constituted, and there is no need for the actual damage caused by the perpetrator's illegal act, as long as the actor has committed the aforementioned illegal act and is subjectively at fault, he shall bear legal responsibility.

Fifth, the form of legal liability provided for in this article

1. Fines. Where the successful bidder or subcontractor commits the above-mentioned illegal acts, the relevant administrative supervision department shall impose a fine on them. The range of fines is between 5/1000 and 10/1000 of the amount of the transferred or subcontracted project, and the specific amount is to be decided by the relevant administrative supervision department on the basis of the seriousness of the perpetrator's illegal conduct.

2. Confiscation of illegal gains. Where the perpetrator has unlawful gains due to transfer or subcontracting, the unlawful gains shall be confiscated concurrently.

3. Order the suspension of business for rectification. Where the successful bidder or subcontractor commits the above-mentioned illegal acts, the relevant administrative supervision department may order him to suspend his business and rectify it within a certain period of time. If the perpetrator corrects the violation within the specified period of time, he may resume business. If the purpose of sanctioning illegal acts can be achieved through fines and confiscation of illegal gains, there is no need to order the suspension of business for rectification.

4. Revocation of business license. Where the circumstances of the successful bidder engaging in the above-mentioned illegal acts are serious, the business license shall be revoked by the administrative organ for industry and commerce. The so-called serious circumstances refer to situations where the perpetrator's conduct has caused relatively serious consequences, the perpetrator has repeatedly committed illegal acts, or the perpetrator's behavior shows that the perpetrator has not corrected the sincerity and possibility of correcting the error, and the application of the above-mentioned legal liability is not sufficient to achieve the purpose of sanctions. Persons whose business licenses have been revoked may no longer engage in relevant business activities.

Sixth, assignments and subcontracting are invalid

If the successful bidder illegally transfers the winning project to another person, or the subcontractor subcontracts again, the transfer or subcontracting act shall be invalid. The invalidity is ineffectual, i.e. from the time of assignment or subcontracting. The property acquired by the actor as a result of the act shall be returned to the other party. The party at fault shall also compensate the other party for the losses suffered as a result. Specifically to the provisions of this article, the successful bidder and the subcontractor shall also compensate the tenderer for the losses suffered as a result. The scope of compensation shall include indirect losses in addition to direct losses.

Article 59 Where the bidder and the successful bidder do not conclude a contract in accordance with the bidding documents and the bidding documents of the successful bidder, or if the bidder or the successful bidder enters into an agreement that deviates from the substantive content of the contract, it shall be ordered to make corrections; a fine of not less than 5/1000 and not more than 10/1000 of the amount of the winning project may be imposed.

【Interpretation】The provisions of this article are the legal liabilities that should be borne for not signing contracts in accordance with the bidding documents and bidding documents and entering into agreements that violate the substantive content of the contract.

First, the illegal acts provided for in this article

1. The tenderer and the successful bidder shall not conclude the contract in accordance with the tender documents and the tender documents of the successful bidder. According to the provisions of the Contract Law, the tender documents of the tenderer are invitations to make an offer, the tender documents of the tenderers are an offer, and the notice of winning the bid issued by the tenderer is an undertaking, that is, an expression of intent to agree to the offer. Article 25 of the Contract Law stipulates that a contract is formed when an undertaking enters into force. Accordingly, the contract between the parties has been established since the tenderer issued the notice of winning the bid to the successful bidder. The reason why this Law requires the tenderer and the successful bidder to sign a written contract after the contract is formed is to take into account the importance and complexity of the tendered project and the requirements for the form of the contract and the effective time of the contract: when the written contract is signed, the contract becomes effective. A written contract helps to further clarify the rights and obligations of the parties. The failure of the tenderer and the successful bidder to conclude a contract in accordance with the solicitation documents and the tender documents violates the mandatory provisions of the law on the one hand, and on the other hand renders meaningless a series of activities carried out for the purpose of tendering. Therefore, article 46 of this Law stipulates that the tenderer and the successful bidder shall conclude a written contract in accordance with the tender documents and the successful bidding documents within thirty days from the date of issuance of the notice of winning the bid.

2. The tenderer and the successful bidder shall conclude an agreement to deviate from the substantive content of the contract. In addition to the above-mentioned methods, the tenderer and the successful bidder may also achieve the purpose of circumventing the tender through more covert methods, such as the tenderer and the successful bidder may conclude a contract in the form of the solicitation documents and the successful bidding documents, but enter into an agreement outside the contract that deviates from the substantive content of the contract. The substantive content of the so-called contract refers to the main terms of the contract such as the bidder's quotation, bidding plan, technical specifications, etc. The result is a form for the contract concluded by the parties on the basis of the solicitation documents and the successful bidding documents. In this regard, article 46 of this Law clearly stipulates that the tenderer and the successful bidder may not enter into other agreements that deviate from the substance of the contract.

Second, the subjects of legal liability provided for in this article are the bidders and bidders.

Third, to constitute legal liability under this article, the perpetrator must have the intention to commit an illegal act. This is manifested in the fact that the tenderer and the successful bidder have the clear purpose of signing a contract outside the tender documents and the successful bidding documents in order to avoid the tender, or to sign an agreement that deviates from the substantive content of the contract.

Fourth, the form of legal liability provided for in this article

1. Order corrections. For tenderers and successful bidders who have committed illegal acts as provided for in this article, the relevant administrative supervision departments shall order them to make corrections within a certain period of time, that is, to conclude contracts in strict accordance with the bidding documents and the bidding documents of the successful bidder. Where an agreement deviating from the substantive content of the contract is concluded in addition to the contract already signed, the signed agreement shall be annulled and the parties shall exercise their rights and perform their obligations in strict accordance with the contract signed on the basis of the tender documents and the bidding documents of the successful bidder.

2. Fines. For bidders and successful bidders who have committed illegal acts provided for in this article, the relevant administrative supervision departments may impose a fine of not less than 5/1000 and not more than 10/1000 of the amount of the winning project. Whether or not to impose a fine shall be determined by the relevant administrative supervision department on a case-by-case basis. No fine may be imposed in the following circumstances: where the perpetrator takes the initiative to correct the illegal act and eliminate the adverse consequences caused therefore;

Article 60 If the successful bidder fails to perform the contract concluded with the bidder, the performance bond shall not be refunded, and if the loss caused to the bidder exceeds the amount of the performance bond, it shall also compensate for the excess; if the performance bond is not submitted, it shall bear the liability for compensation for the loss of the tenderer.

If the successful bidder fails to perform its obligations in accordance with the contract concluded with the bidder, and the circumstances are serious, its bidding qualifications for participating in the projects that must be tendered according to law within two to five years shall be cancelled and announced, until the business license is revoked by the administrative organ for industry and commerce.

If the contract cannot be performed due to force majeure, the provisions of the preceding two paragraphs shall not apply.

【Interpretation】The provisions of this article stipulate the legal liability of the successful bidder for its breach of contract.

First, the illegal acts provided for in this article are the breaches of contract by the successful bidder. The premise constituting a breach of contract under this article is that the tenderer and the successful bidder have signed a legally valid contract, and if the contract between the parties is not established or does not take effect, there is no breach of contract.

The default of the successful bidder can be roughly divided into the following categories:

1. Non-fulfillment. The so-called non-performance refers to the act of not performing the contract when it reaches the performance period. Non-performance can be divided into refusal to perform and failure to perform. The former refers to the situation in which the successful bidder is able to actually perform but deliberately fails to perform without a legitimate reason; the latter refers to the situation in which the contract reaches the performance period and the successful bidder cannot actually perform. For the failure to perform due to the subjective fault of the successful bidder, the successful bidder shall still bear legal responsibility.

2. Incomplete performance, that is, the successful bidder has not fully performed its obligations in accordance with the contract, which is also called improper performance or incorrect performance. Incomplete performance is divided into two situations: one is that the payment is defective, as far as the project is concerned, it means that there are quality problems in the engineering project completed by the successful bidder; the other is the harmful payment, as far as the bidding project is concerned, it means that the bidding project completed by the winning bidder not only does not meet the quality requirements, but also causes personal and property damage to others because of the quality problem.

3. Delay in performance, that is, the successful bidder is able to perform but does not perform the contractual obligations in accordance with the statutory or agreed time, such as the successful bidder cannot complete the bidding project on time.

4. The act of breaking the contract, that is, the successful bidder unilaterally tears up the contract without any legitimate reason or legal basis.

Second, the subject of the legal liability provided for in this article is the successful bidder who has signed a contract with the bidder.

Third, according to the provisions of the Contract Law, the legal liability provided for in this article is constituted, and the actor does not need to be subjectively at fault, and as long as the actor commits the breach of contract, it shall be responsible for the breach.

Fourth, the form of legal liability provided for in this article

1. The performance bond will not be refunded. In order to urge the successful bidder to perform the contract, paragraph 2 of article 46 of this law stipulates that if the bidding documents require the successful bidder to submit a performance bond, the successful bidder shall submit it. If the successful bidder who paid the performance bond fails to perform the contract, the performance bond paid shall not be refunded, regardless of whether the successful bidder's breach of contract has caused damage to the tenderer.

In addition, the non-return of the performance bond is premised on the successful bidder having submitted the performance bond, since the performance bond should not be submitted under any circumstances. According to the provisions of this Law, the successful bidder shall only submit a performance bond if the bidder requests the successful bidder to submit it. Conversely, no submission is required.

2. Compensation for losses. If the successful bidder's breach of contract causes losses to the bidder, the successful bidder shall bear the responsibility for damages. According to the provisions of the Contract Law, the scope of compensation for the successful bidder includes the direct and indirect losses suffered by the bidder, but shall not exceed the losses that the parties foresaw or should have foreseen at the time of the conclusion of the contract. The performance bond paid shall be set off as part of the damages. If the amount of the performance bond exceeds the loss caused by the breach of contract, the successful bidder shall not compensate for the loss. On the contrary, if the amount of the performance bond is lower than the loss caused by the breach, the successful bidder should also compensate for the insufficient part. In addition, the liability of the successful bidder should be limited to damage to property and not to moral damage.

3. Disqualification from bidding. If the successful bidder fails to perform its obligations in accordance with the contract concluded with the bidder, and the circumstances are serious, the relevant administrative supervision department shall cancel its bidding qualifications for participating in the projects that must be tendered according to law within two to five years and make a public announcement. The so-called serious circumstances refer to the situation that the successful bidder's breach of contract has caused significant losses.

4. Revocation of business license. If the bidding qualifications of the successful bidder to participate in the projects that must be tendered within two to five years are cancelled and the bidding qualifications are not enough to achieve the purpose of sanctions, the administrative organ for industry and commerce shall revoke the business license of the successful bidder. The successful bidder whose business license has been revoked shall no longer engage in relevant business.

Fifth, the grounds for exemption

According to the provisions of this article, if the successful bidder is unable to perform the contract due to force majeure, he may be exempted from liability. The so-called force majeure refers to situations that cannot be foreseen, avoided and insurmountable. This includes natural disasters and certain social phenomena. The former such as volcanic eruptions, earthquakes, typhoons, hail and floods, etc.; the latter such as wars. Because the purpose of the legal liability system is to protect the legitimate rights and interests of citizens and legal persons, remedy the illegal damage they have suffered, educate and restrain people's behavior, and prevent the occurrence of illegal acts. If people are held liable for damage caused by events that they subjectively cannot foresee and cannot avoid or overcome, this will not only fail to achieve the purpose of legal responsibility, but also unfair to those who bear responsibility. In this regard, the Contract Law also has clear provisions: if the contract cannot be performed due to force majeure, the liability shall be partially or completely exempted according to the impact of force majeure, unless otherwise provided by law.

However, if force majeure occurs during the period of delay in the performance of the obligation, the debtor cannot refuse to bear civil liability for breach of the debt on the grounds of force majeure.

According to the Contract Law, if the successful bidder is unable to perform the contract due to force majeure, it shall promptly notify the tenderer to mitigate the losses that may be caused to the tenderer, and shall provide proof of the occurrence of force majeure within a reasonable period of time.

Article 61: The administrative punishments provided for in this Chapter are to be decided by the relevant administrative supervision departments provided for by the State Council. The exceptions already provided for in this Law for organs that impose administrative penalties are provided for.

【Interpretation】The provisions of this article refer to the subject of administrative punishment.

First, the subject of the administrative punishment provided for in this Law

According to the provisions of this article, the subject of administrative punishment is the relevant administrative supervision department. The law does not clearly stipulate the subject of administrative punishment, but authorizes the State Council to make provisions, so this article, like the provisions of article 7 of this law on the division of powers of administrative supervision departments, needs to be formulated by the State Council according to actual conditions.

Second, the subject of administrative punishment has jurisdiction over administrative punishment cases

The jurisdiction of administrative punishment cases solves the problem of which department, which level, and which region of the administrative supervision body is responsible for handling after the occurrence of administrative violations. According to the provisions of this Law and the Administrative Punishment Law, the jurisdiction of administrative punishment cases provided for in this Law may be determined from the following aspects:

1. Each administrative supervision department shall have jurisdiction over cases of administrative violations occurring within the scope of its own authority.

2. Administrative punishment cases are under the jurisdiction of the administrative supervision department at the place where the illegal conduct occurred. However, if it is more convenient for the administrative supervision department of the place of residence of the offender to have jurisdiction, the administrative supervision department of the place of residence of the offender may also have jurisdiction after consultation with the administrative supervision department of the place where the act occurred.

3. Where two or more administrative supervision departments have jurisdiction to punish the same illegal conduct, or where the location of the illegal conduct is difficult to ascertain, the administrative supervision department that first investigates and handles the case has jurisdiction.

4. Where two or more administrative supervision departments have a dispute over the power of administrative punishment, it shall be resolved through consultation. Where consultation fails, report to the common administrative organ at the level above to designate jurisdiction.

5. The level of jurisdiction over administrative penalties shall be prescribed by specific laws and regulations. This Law does not clearly stipulate this, and the level of jurisdiction of administrative punishment shall be determined by the relevant administrative departments under the State Council on their own in accordance with the illegal conduct, the geographical scope involved in the illegal subject, and the extent of the impact of the illegal act.

Third, the administrative supervision department applies administrative penalties

The application of administrative punishment refers to the activity of the administrative supervision department, on the basis of determining that the perpetrator's conduct is illegal, deciding in accordance with law whether to impose administrative punishment on the actor and how to impose punishment, and it is an activity that applies the principles, forms, and specific methods of administrative punishment provided for in administrative law norms to various specific administrative violation cases.

(1) The conditions for the application of administrative penalties

1. The precondition for the application of administrative penalties is that citizens, legal persons or other organizations have committed administrative violations.

2. The subject condition for the application of administrative punishment, that is, the administrative punishment must be implemented by the supervision department that enjoys the statutory administrative punishment power.

3. The object conditions for the application of administrative punishment must be a person who violates the law and should be subject to administrative punishment and has a certain capacity for responsibility.

4. The limitation period for the application of administrative penalties, according to article 29 of the Administrative Punishment Law, if the illegal act is not discovered within two years, the administrative punishment will not be given.

(2) Methods for applying administrative penalties

1. No penalty and no penalty.

(1) No penalty is imposed

Non-punishment refers to the decision made by an administrative organ not to apply administrative punishment to certain persons who have violated the law in form but should not bear the responsibility for violating the law in substance because of the existence of reasons for the existence of reasons for existence provided for in laws and regulations.

(2) Exemption from penalty

Exemption from punishment refers to the decision made by administrative organs to exempt offenders who should have been punished in accordance with the provisions of laws and regulations, considering the existence of special circumstances prescribed by law.

2. "May" penalties versus "shall" penalties

(1) "May" penalty

"May" punishment means that the subject of administrative punishment may or may not give administrative punishment to the offender. Alternatively, the punishment may be severe or mitigated, or the punishment may not be mitigated or severe.

(2) "shall" be punished

"Should" punishment includes the following three meanings: first, administrative punishment should be applied to violators; second, punishment should be mitigated, mitigated or exempted; third, punishment should be heavier. The subject of an administrative punishment has no right to decide whether to impose a penalty.

3. Mitigating, mitigating, and heavier punishments

(1) Lenient punishment

Lenient punishment refers to the administrative subject's choice to apply a lighter method and a lower range of punishment to the administrative offender within the statutory punishment method and punishment range.

(2) Mitigating punishment

Mitigating punishment refers to the administrative entity's application of administrative penalties to the offending counterparty below the minimum statutory range of punishments.

(3) Heavier punishment

Aggravated punishment is the symmetry of light punishment, which refers to the application of a more severe punishment method to the offending counterparty within the statutory punishment method and range, or the application of a penalty close to the upper limit or upper limit within the range allowed by a certain punishment method.

4. Single and concurrent

(1) Single

Single punishment means that the administrative entity applies only one punishment method to the offending counterparty.

(2) Merger

Concurrent punishment means that the administrative entity applies two or more administrative punishment methods to a certain illegal act of the other party in accordance with the law.

Article 62 Where any unit violates the provisions of this Law by restricting or excluding legal persons or other organizations outside the region or system from participating in bidding, and appoints a bidding agency for the bidder, the bidder is compelled to entrust the bidding agency to handle bidding matters, or interferes in bidding and bidding activities in other ways, it shall be ordered to make corrections;

Where individuals use their authority to carry out the illegal acts mentioned in the preceding paragraph, responsibility is to be pursued in accordance with the provisions of the preceding paragraph.

【Interpretation】The provisions of this article are the legal liability that should be borne for illegal acts of interfering in bidding activities.

First, the illegal acts provided for in this article

1. Restrict or exclude legal persons or other organizations outside the region or the system from participating in bidding. In practice, some units, out of consideration for departmental interests or local interests, set up various obstacles to restrict or exclude legal persons or other organizations outside the region or system from participating in bidding, which violates the principle of fairness and impartiality that should be followed in bidding and bidding. In this regard, article 6 of this law clearly stipulates that the bidding activities of projects that must be tendered according to law are not restricted by regions or departments. No unit or individual may illegally restrict or exclude legal persons or other organizations outside that region or system from participating in bidding.

2. Appoint a tendering agency for the tenderer. Bidding agencies refer to social intermediary organizations established in accordance with law, engaged in bidding agency business and providing related services. As a social intermediary organization, the bidding agency mainly uses its professional advantages to obtain the trust of the bidder, and its business should come from the entrustment of the bidder. At present, China's bidding market is not yet perfect, and some bidding agencies that exist in real life have not yet separated from the relevant administrative organs, have semi-official colors, and mainly rely on administrative instructions in the source of business, which seriously deviates from the norms of market behavior. To this end, paragraph 1 of Article 12 of this Law stipulates that the tenderer has the right to choose a tendering agency on its own and entrust it to handle the tendering matters, and no unit or individual may appoint a tendering agency for the tenderer in any way.

3. The bidder is forced to entrust the bidding agency to handle the bidding matters. For bidders with the ability to prepare bidding documents, whether it is necessary to entrust a bidding agency to conduct bidding is part of the bidder's independent management right, and other units or departments may not interfere. Forcing the bidder to entrust the bidding agency to handle the bidding matters is bound to infringe on the bidder's operational autonomy and violate the principle of market economy. In view of this, paragraph 2 of Article 12 of this Law stipulates that if the tenderer has the ability to prepare the tender documents and organize the evaluation of the bid, he may handle the bidding matters on his own. No unit or individual may compel them to entrust a bidding agency to handle bidding matters.

4. Interfere in tendering and bidding activities in other ways. Bidders have the right to conduct bidding on their own, and no organ or individual may interfere in bidding and bidding activities in any way except to accept the supervision of the relevant supervision departments in accordance with law. The "other way" referred to here is a flexible provision for the sake of legislative technology in order to avoid omitting other interference in tendering and bidding that may exist in real life.

Second, the subject of legal liability provided for in this article is any person with legal capacity, including legal and natural persons, but more often administrative departments and, in some cases, individuals with authority.

Third, the form of legal liability provided for in this article

1. Order corrections. Where the perpetrator has unlawful conduct provided for in this article, the relevant administrative supervision department shall order him to make corrections within a time limit.

2. Administrative sanctions. Where a unit engages in illegal conduct provided for in this article, the relevant administrative supervision department shall give administrative sanctions to its directly responsible managers or other directly responsible personnel. Where individuals use their authority to engage in the above-mentioned illegal conduct, they shall also be given administrative sanctions. Administrative sanctions include warnings, demerits, major demerits, demotion, removal, expulsion, and so forth.

Article 63 Where a functionary of a state organ who has the responsibility of administrative supervision over bidding and bidding activities in accordance with law engages in malpractice for personal gain, abuses of power, or neglects his duties, and constitutes a crime, criminal responsibility shall be pursued in accordance with law; where it does not constitute a crime, administrative sanctions shall be given in accordance with law.

【Interpretation】The provisions of this article refer to the legal responsibility of the functionaries of state organs for their illegal acts.

First, the offences provided for in this article

1. Crime of abuse of power. The crime of abuse of power refers to the conduct of a functionary of a state organ in exercising his or her powers in violation of the purposes authorized by law, exceeding the scope of his or her powers, or violating procedures for exercising his or her powers, resulting in major losses to public property, the state, and the interests of the people. The crime of abuse of power is a new crime established in China's new criminal law.

The crime of abuse of power has the following characteristics:

(1) Special subjects of the main system of crime. According to the new Criminal Law, the main body of the crime of abuse of power is composed of employees of state organs. Staff of State organs refers to the legislative, judicial and administrative organs of the State and the staff of military organs. Specifically, as far as the provisions of this article are concerned, the main body of the crime of abuse of power is the staff of a state organ who has the responsibility of administrative supervision over bidding and bidding activities in accordance with the law.

(2) The subjective element of the crime is intentional. The perpetrator clearly knows that his or her conduct violates the purpose of authorization or use of power, clearly knows that his conduct does not conform to the scope provided by laws or regulations, or clearly knows that his conduct is in violation of procedures. As for what motives and purposes are there, it is not asked.

(3) Objective elements of the crime: the crime of abuse of power can only be constituted by acts, and omission does not constitute this crime; to constitute the crime of abuse of power, the perpetrator's behavior must cause major losses to public property, the interests of the state and the people, and the abuse of power has a criminal law causal relationship with the harmful consequences.

(4) The object of the offence is the normal activity of the State organs.

According to article 397 of the Criminal Code, the crime of abuse of power shall be punished by fixed-term imprisonment of not more than 3 years or criminal detention;

2. Crimes of dereliction of duty. The crime of dereliction of duty refers to the conduct of a functionary of a state organ who is seriously irresponsible, fails to perform or incorrectly performs his duties, resulting in major losses to public property, the interests of the state and the people.

The crime of dereliction of duty has the following characteristics:

(1) Special subjects of the main criminal system. According to the new Criminal Law, the main body of the crime of dereliction of duty is composed of the staff of the state organs. For the purposes of this article, the subject of the crime of dereliction of duty shall be the staff of a state organ who has the responsibility of administrative supervision over tendering and bidding activities in accordance with the law.

(2) The subjective aspect of the crime may be constituted by negligence or by intent, but only indirectly intentionally.

(3) In terms of the objective aspect of crime, first of all, the crime of dereliction of duty can be manifested as acting or inaction. Secondly, the offence of dereliction of duty must objectively have the harmful consequences prescribed by law. Finally, to constitute the crime of dereliction of duty, there must be a causal relationship between the dereliction of duty and the statutory harmful consequences.

(4) The object of the offence is the normal activity of the State organs.

According to article 397 of the Criminal Code, the crime of dereliction of duty shall be punishable by imprisonment of not more than 3 years, criminal detention or public surveillance;

3. Crimes of favoritism. The crime of favoritism and malpractice refers to the conduct of a functionary of a state organ taking advantage of his position to abuse his power for personal gain, commit fraud, bend the law to shield, and illegally exercise his or her powers or duties, with serious circumstances.

Characteristics of the crime of favoritism:

(1) The special subject of the main system of the crime, that is, the staff of the state organ, specifically as far as this article is concerned, the subject of the crime of favoritism and fraud is the staff of the state organ who is responsible for the administrative supervision of bidding and bidding activities in accordance with the law.

(2) The objective aspect of the crime is manifested as, first, the act of favoritism and fraud, that is, taking advantage of one's position to abuse one's power for personal gain, engaging in deception, and exercising one's authority in violation of the law. Secondly, acts of favoritism and fraud have caused heavy losses to public property, the interests of the State and the people. The crime of favoritism is a consequence offender, that is, only if the act has caused serious harm to the result, it constitutes a crime.

(3) The subjective aspect of the crime is constituted by intent and is generally direct intentional.

(4) The object of criminal infringement is the normal management activities of state organs.

According to article 397 of the Criminal Law, a functionary of a State organ who commits the crime of favoritism, causing major losses to public property, the interests of the State and the people, shall be sentenced to fixed-term imprisonment of not more than 5 years or criminal detention;

Where a functionary of a state organ who has the responsibility for administrative supervision over bidding and bidding activities in accordance with law engages in malpractices for personal gain, abuses his powers, or neglects his duties, and the circumstances are obviously minor and does not constitute a crime, the relevant administrative supervision departments shall give administrative sanctions in accordance with law.

Article 64 Where a project that must be tendered in accordance with law violates the provisions of this Law and the winning bid is invalid, the winning bidder shall be re-determined from among the remaining bidders or re-tendered in accordance with this Law in accordance with the conditions for winning the bid provided for in this Law.

【Interpretation】The provisions of this article are the legal consequences of the invalidation of the winning bid.

First, the case of invalidity of the winning bid provided for in this Law

1. Where a bidding agency violates the provisions of this Law by divulging the circumstances and materials related to bidding and bidding activities that should be kept confidential, or colluding with bidders or bidders to harm the interests of the state, the societal public interest or the lawful rights and interests of others, affecting the results of winning the bid, the winning bid shall be invalid. (Article 50 of the Law on Tendering and Bidding)

2. If the tenderer discloses to others the name and quantity of potential bidders who have obtained the tender documents or other circumstances related to tendering and bidding that may affect fair competition, or the act of leaking the bid floor affects the result of winning the bid, the winning bid shall be invalid. (Article 52 of the Law on Tendering and Bidding)

3. Bidders collude with each other to bid, collude with bidders to bid, or pay bribes for winning bids are invalid. (Article 53 of the Law on Tendering and Bidding)

4. If the bidder bids in the name of others or fraudulently obtains the winning bid in other ways, the winning bid shall be invalid. (Article 54 of the Law on Tendering and Bidding)

5. Where the tenderer violates the provisions of this Law and negotiates with the bidder on the substantive content of the bidding price, bidding plan, etc., affects the result of the winning bid, the winning bid shall be invalid. (Article 55 of the Law on Tendering and Bidding)

6. If the bidder determines the successful bidder other than the successful candidate recommended by the bid evaluation committee in accordance with the law, or determines the successful bidder on his own after all bids are rejected by the bid evaluation committee, the winning bid shall be invalid. (Article 57 of the Law on Tendering and Bidding)

The circumstances that lead to the invalidity of the winning bid can be divided into two categories: the illegal act directly leads to the invalidity of the winning bid, such as the provisions of articles 53, 54 and 57 of this Law;

Second, the meaning of "invalid winning bid"

The so-called invalidity of the winning bid means that the winning bid determined by the bidder has lost its legal binding force, that is to say, the bidder who has won the bid according to the illegal act has lost the qualification to sign a contract with the bidder, and the bidder no longer has the obligation to sign a contract with the successful bidder. Where a contract has already been signed with the tenderer, the contract signed is invalid. Since, in the case of invalid winning bids, the law often requires the bidders to re-identify the winning bidders from among the remaining bidders in accordance with the winning conditions laid down in this Law, the invalidity of the winning bid does not mean that the bidding procedures are invalid. Of course, in some cases, if the violation involves all the bidders, or if none of the bidders meet the conditions for winning the bid, the bidder should re-bid.

Third, the legal consequences of the invalidation of the winning bid

If, in accordance with the provisions of this Article, the winning bid is invalid, the bidder shall re-determine the winning bidder from among the remaining bidders in accordance with the conditions for winning the bid stipulated in this Law. If there is no successful bidder who meets the prescribed conditions, the bidder shall conduct a new bidding in accordance with this Law.

In addition, the invalidity of the winning bid will also involve other legal consequences: if the tenderer and the bidder have signed a contract, the contract is invalid. According to the Contract Law, after a contract is invalid, the property acquired as a result of the contract shall be returned; if it cannot be returned or is not necessary, it shall be compensated at a discounted price. The party at fault should also compensate the other party for the losses suffered as a result. Where both parties are at fault, they shall each bear corresponding responsibility.

Chapter VI Supplementary Provisions

This chapter is a supplementary provision and consists of 4 articles. It provides for the objection procedure for interested parties, exceptions to the scope of compulsory tendering, conflict norms and the time of entry into force of this Law. Technically speaking, the by-laws generally provide for non-normative provisions that are complementary. These non-normative provisions do not logically become an organic whole.

Article 65 Where bidders and other interested parties find that bidding and bidding activities do not conform to the relevant provisions of this Law, they have the right to raise objections to the bidders or to complain to the relevant administrative supervision departments in accordance with law.

【Interpretation】This article provides for the right of appeal of those who have objections to bidding activities.

First, the subjects of rights provided for in this article are bidders and other interested parties. Other interested parties refer to natural persons, legal persons or other organizations other than bidders who have a direct or indirect interest in the bidding project or bidding activities, such as the user of the bidding project.

Second, in accordance with the provisions of this article, when bidders and other interested parties raise objections to bidders or complain to the relevant administrative supervision departments, they do not need to produce accurate evidence to prove that the bidding and bidding activities are illegal, as long as they "believe" that the bidding and bidding activities do not comply with the relevant provisions of this Law, but the bidders and other interested parties cannot use this to interfere with the bidding activities and must not slander and frame them.

Third, the unit that accepts the objection is the bidder, and the department that accepts the complaint is the relevant administrative supervision department.

Article 66: Projects involving national security, state secrets, emergency rescue and disaster relief, or projects that are not suitable for bidding under special circumstances such as the use of poverty alleviation funds to carry out work-for-charity, or the need to use migrant workers, may not be subject to bidding in accordance with the relevant provisions of the State.

【Interpretation】The provisions of this article are exceptions to compulsory bidding.

In accordance with the provisions of this Article, the following projects may not be tendered in accordance with national regulations.

First, projects involving national security. The so-called projects involving national security refer to projects involving national security, such as national defense, cutting-edge science and technology, and military equipment, which involve national security and will have a major impact on national security. These projects, which have a significant impact on national security, require special procurement methods.

Second, projects involving state secrets. The so-called state secrets refer to matters related to national security and interests, determined in accordance with legal procedures, and known only to a certain range of people within a certain period of time.

Because of the state secrets involved, there is a conflict between the legal requirements for the confidentiality of these projects and the requirements for openness in the tendering process. Therefore, projects involving state secrets are not suitable for bidding.

Third, emergency rescue and disaster relief projects. Rescue and disaster relief has a strong time nature, it is necessary to take rapid and decisive action in the short term to eliminate dangerous situations and relieve disaster victims, and the bidding includes a series of complex procedures such as issuing bidding documents, qualification review, bidding, and bid evaluation, which is bound to take a long time, and obviously does not meet the time requirements of the rescue and disaster relief project. Therefore, emergency rescue and disaster relief projects are not suitable for bidding.

Fourth, use poverty alleviation funds to implement projects that use work for relief and need to use migrant workers. The so-called work-for-relief refers to a policy in which the state uses poverty alleviation funds to build poverty alleviation projects, absorbs poverty alleviation targets to participate in the construction of the project or becomes the staff of the project after completion, and achieves the purpose of poverty alleviation in the form of wages and the regular income of the project. Since the cash-for-work project has a clear service target, there is no need for bidding.

Fifth, other circumstances of tendering do not apply.

Where procurement projects fall within the scope listed above, tendering may not be conducted in accordance with national regulations. The "state regulations" referred to here refer to laws, administrative regulations or other normative documents issued by the State Council.

Article 67 Where a project using loans or assistance funds from an international organization or a foreign government is used to conduct bidding, and the lender or provider of funds has different provisions on the specific conditions and procedures for bidding and bidding, those provisions may apply, except where it is contrary to the societal public interest of the People's Republic of China.

【Interpretation】The provisions of this article are the application of international bidding procedures or foreign bidding procedures to China's bidding activities.

Since the beginning of reform and opening up, China's use of loans from international financial organizations and foreign governments has gradually expanded. At present, the loans of international financial organizations and foreign governments used by China mainly include loans from the World Bank, loans from the Asian Development Bank, and loans from the Japan Overseas Economic Cooperation Fund. In 1996, the balance of loans from international financial organizations in China was 16.739 billion US dollars, and the balance of loans from foreign governments was 22.164 billion US dollars. At the request of lenders, projects utilizing these loans generally require international competitive tenders or domestic public tenders. China's window management departments for these loans have also formulated some administrative implementation regulations in accordance with the relevant provisions and requirements of lenders, such as the Guidelines for domestic competitive bidding and procurement of World Bank loan projects, the Measures for reviewing the Bidding and Procurement of Mechanical and Electrical Equipment for World Bank Loan Projects, the Notice on the Text of the Standards for Bidding and Procurement of World Bank Loan Projects, and the Notice on promulgating the Guidelines entrusted by the International Bidding Agency for Loan Projects of the World Bank and the Asian Development Bank. In this way, a relatively unique competitive bidding and bidding system using loans from international financial organizations and foreign governments has been formed in China. The bidding and bidding of the above-mentioned loan projects are generally more transparent and standardized, and each step of the procedure has corresponding supervision measures, such as the review of bidding documents, the review of prequalification decisions, the review of bid evaluation, etc., thus ensuring openness, fairness and strong competitiveness. However, there are also some problems in practice, one of the main manifestations of which is that there are certain differences between the relevant domestic bidding procedures and the bidding procedures of international financial organizations, such as the use of exclusive bidding according to the Asian Development Bank's Loan Procurement Guidelines, and the way of inquiry procurement, that is, a procurement method that compares the quotations of more than three suppliers to ensure that the price is competitive, is also allowed. In addition, there are obvious differences with China's law on tendering and bidding in terms of the review of relevant procedural acts. In order to solve the problems arising from the differences between the bidding procedures of international financial organizations and foreign governments and the domestic bidding procedures, this Law stipulates that if the lender or the provider of funds for bidding projects using loans or assistance funds from international organizations or foreign governments has different provisions on the specific conditions and procedures for bidding and bidding, its provisions may be applied.

According to the provisions of this Article, the premise for applying the specific conditions and procedures proposed by lenders and fund providers is that these conditions and procedures do not run counter to the social and public interest of the People's Republic of China. In theory, such a provision is called a reservation of public order. In international interaction and cooperation, the reservation of public order is often used as a means of limiting or excluding the application of foreign law.

Article 68 This Law shall enter into force on January 1, 2000.

【Interpretation】 This article stipulates the time when this Law will enter into force.

There are several different situations in which a law takes effect: some laws enter into force on the date of promulgation, and for some of the more important and complex laws, they often enter into force some time after their promulgation in order to ensure that there is a familiar process for the public.

The time of entry into force of a law also involves the retroactivity of the law, i.e. whether a newly enacted law applies to an act that occurred before it entered into force. Generally speaking, the law is based on the principle of non-retroactivity, with the exception of retroactivity. As far as this Law is concerned, we do not consider it retroactive. The original legal provisions shall apply to acts that occurred before the entry into force of this Law; In cases decided before the entry into force of this Law, if a party appeals after the entry into force of this Law, the court shall conduct a second-instance trial in accordance with the original law.

The temporal scope of law also concerns the question of when the law lapses. Some laws specify in the provisions the period of their application, which automatically expires. However, most laws do not specify in the provisions the time of their lapse, and when the law expires is generally prescribed by the newly promulgated relevant laws. There are also laws that naturally lapse due to changes in objective circumstances. It may be argued that this act will remain in force until it is replaced by a new law or is explicitly declared repealed.